VOLUME 5

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1965

No. 131

MARGARET L. HOLT, ET AL., PETITIONERS,

vs.

ALLEGHANY CORPORATION, ET AL.

No. 132

MARGARET L. HOLT, ET AL., PETITIONERS,

vs.

ALLAN P. KIRBY, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED MAY 12, 1965
CERTIORARI GRANTED JUNE 1, 1965

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

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[fol. 1886]

IN THE UNITED STATES DISTRICT COURT

PLAINTIFFS' EXHIBITS Nos. 399 and 399A

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

Re: SADIE ZENN, et al,

Plaintiffs,

—against—

J. J. ANZALONE, et al,

Defendants.

Bar Association,
42 West 44th Street,
New York, N. Y.,

September 22, 28, 29, October 6 and October 13, 1955, 10:30 a. m.

Before:

HON. ROBERT J. FITZSIMMONS,
Referee.

• • •

[fol. 1887] [765] DAVID W. WALLACE resumed and testified further as follows:

• • •

[897] Q. Did you at any time look into the records of Alleghany Corporation for data concerning the 1949 and 1950 transactions referred to in this first cause of action? A. Yes; I think early in the game Mr. Young asked me to prepare extracts of the minutes and get copies of the

proxy statement and the correspondence in this transaction, from my records.

Q. And, Mr. Wallace, did you compile all of this written data? A. I furnished Mr. Young with this data, yes.

Q. Do you have a copy of this data available? A. I subsequently turned that data over to Mr. Pomerantz, copies of that data. I think that most of it is in evidence here.

Q. Is all of it in evidence? A. I would have to look at the list of exhibits. I recall saying to Mr. Daly that the January 20th letter of Mr. Anzalone was not in evidence, as I recall.

I mean, I just cannot say. The pertinent—the important documents are, I think, all in; but there may be a letter of that nature which, through inadvertence or some decision that I am not aware of, [898] he did not put it in.

Mr. Haudek: Particularly with respect to Mr. Anzalone's letter that Mr. Wallace mentioned, I did not put it in because I could not see any earthly relevance to it. [fol. 1888] The Witness: Well, I do.

Mr. Graubard: Perhaps you would want to supplement the record at this time, since this has been mentioned, by putting it in, in order to eliminate any further inquiry.

The Referee: We have so much material in the record now, half of which does not bear on the question of the fairness and reasonableness of the settlement, and if, in the judgment of the attorney for the plaintiff stockholders this letter does not have any bearing on the fairness and reasonableness of the proposed settlement, I would propose that we keep it out.

Mr. Haudek: I will be happy to show it to Mr. Graubard.

Mr. Graubard: I will be happy to see it, Mr. Haudek.

Q. Did you turn over to Mr. Pomerantz all the data [899] that you found in your files, pertaining to this I. D. S. transaction? A. To the best of my knowledge, I did. I

know that I turned some of it over to him, and I got it right back, on the same grounds as this letter of Mr. Anzalone was not placed in evidence.

Q. Would you check your records again, please, Mr. Wallace, in order to ascertain whether or not there is any memorandum, letter, note, document, or any evidence of any transaction, in writing or print or any form whatsoever, which has not been turned over to Mr. Pomerantz, but [fol. 1889] which is in the possession of Alleghany Corporation? A. I will have some one in my office do that; yes, sir.

Mr. Daly: I do not propose to do that at all, Your Honor.

Mr. Graubard: I am not asking Mr. Daly to do it. He is going to be in California.

Mr. Daly: I am going to direct the witness not to do it.

Mr. Graubard: Does the witness take directions from Mr. Daly with respect to this? Does he take [900] directions from Mr. Daly in this matter?

The Witness: No, in this matter I will act on my own.

I appreciate Mr. Daly's advice, but I will have some one check.

I do not see any purpose in it, but I will see to it that it is done.

Mr. Daly: I object on behalf of the defendant directors to such request. It is too broad, it is meaningless.

The Referee: It is harmless, also. You can also say that about it.

Mr. Daly: You can say that, too.

Mr. Graubard: I hope not, Your Honor; I hope that there will be a real punch to this.

The Witness: Mr. Graubard, I would like to say this here, if I may: if you have in mind any particular document, I wish you would tell me, because the files [fol. 1890] of Alleghany are extensive, and if I knew you were looking for some particular document I would do my level best to dig it out.

The Referee: Off the record.

(Discussion off the record.)

[901] The Referee: Go ahead, Mr. Graubard.

By Mr. Graubard:

Q. I am particularly interested, Mr. Wallace, in any memoranda bearing upon any transactions of I. D. S., of which Alleghany was informed.

I should like to know, for example—and perhaps you can tell us offhand—whether in 1949 there were any written weekly statement which were made up, of the values of securities or purchases or sales or contracts of I. D. S.

Mr. Daly: Made up by whom?

Mr. Graubard: I do not know by whom. Anything at all from I. D. S. along that line.

The Witness: Made up by the management of I. D. S.?

Mr. Graubard: That is right.

The Witness: May I say this: as I testified this morning, Mr. Purcell was the officer who, until 1953, was directly in charge of Alleghany's investment in I. D. S.

When he left to go out to I. D. S. he took with him a great many papers.

[fol. 1891] Since then I have checked with I. D. S., because I do not have any such reports in my file.

[902] They tell me that the quantity of reports that I. D. S. prepares are just staggering, and that they never had Mr. Young on a list for these reports, generally, and as to a specific report I will do my best to find out.

By Mr. Graubard:

Q. Did they have Mr. Purcell on their list, in 1949? A. I will find that out. As to what reports, as to the value of securities?

Q. Anything bearing on the value of securities. There is no mystery about this at this time. A. There is considerable mystery to this, sir.

The Referee: Let us cut this out. We will proceed by question and answer from this point on.

In that way we will be able to move ahead much faster.

Q. I want anything bearing upon the earnings of I. D. S. and, therefore, the value of its stock, at the end of 1949, during the Fall of 1949, and the Spring of 1950. A. I couldn't undertake to do that.

Q. In the files of Alleghany. [903] A. Well, I know now that there is nothing in the files of Alleghany, Mr. Graubard.

The Referee: All right, that is an answer, there is nothing in the files of Alleghany on that score.

[fol. 1892] Q. Have you checked the Alleghany files for that, for that period?

The Referee: (To Witness) Yes or no.

A. As to material coming from I. D. S.?

Q. Yes. A. Other than annual reports and documents already submitted, I said, "Yes"; but I said I strongly suspect that when Mr. Purcell left Alleghany in 1953, he may have taken with him quite a few reports; but, as you will recall, I testified this morning that Mr. Purcell was leaving to assume the duties of chairman of the board of I. D. S.

Q. After Mr. Purcell left, did I. D. S. send these voluminous reports, which you mentioned before, directly to Alleghany? A. I do not know, sir.

Q. Are you familiar with the I. D. S. files, or the references to I. D. S. transactions, in the files of [904] Alleghany? A. Yes, sir.

Q. Do you know whether they have monthly statements in them? A. They do not, sir. I—

The Referee: (To Witness) They do not. That is an answer.

The Witness: All right.

Q. Do they have any memoranda or correspondence relating to major contracts of I. D. S.? A. I don't remember.

[fol. 1893] Q. Do they have any statements, other than the printed statements, of I. D. S., in regard to current or future earnings? A. I don't remember.

Q. You stated earlier today, I believe, Mr. Wallace, that after Mr. Purcell left Alleghany Mr. Young undertook direct supervision of I. D. S. Is that correct? A. I said that after Mr. Purcell left, Mr. Young became the officer of Alleghany chiefly responsible for the overseeing of Alleghany's investment in Investors Diversified.

Q. Did Mr. Young ever delegate to you any of [905] these duties relating to supervision of I. D. S.? A. Since I had become associated—

Q. Is the answer "yes"? A. Yes.

Q. All right. To what extent? A. To the extent that Mr. Young has asked me to look into specific matters pertaining to I. D. S.; to the extent that he has asked me to consult with Mr. Fitzsimmons when Mr. Fitzsimmons said he would like to consult with someone in Alleghany as to I. D. S. matters.

To anticipate: I do receive all the semi-annual and annual reports now of I. D. S., Investors Syndicate, and their affiliated companies.

Q. Does Mr. Purcell or any other officer of I. D. S. ever advise you, or did he, or any other officer advise you in the past, concerning any important contracts executed or to be executed by I. D. S.? A. No.

Q. Did you ever receive such advice from anybody at I. D. S.? A. I don't think so; not to my recollection.

[fol. 1894] Q. Do you know whether Mr. Young ever received [906] such advice? A. I don't know that.

Q. Did Mr. Young ever discuss with you any forthcoming actions to be taken by I. D. S.? A. Since I became an officer of Alleghany?

Q. Since you became an officer of Alleghany; yes, that is correct. A. Yes, sir.

Q. When, Mr. Wallace, as of what date? Can you tell us? A. Some of these are highly confidential, and I do not—

The Referee: Sustained.

Mr. Graubard: May I speak in support of that question, Your Honor?

The Referee: No.

Mr. Graubard: Your Honor must realize that I have—

The Referee: Anything that has to do with the settlement of the case, yes.

Mr. Graubard: Your Honor, this bears directly on the settlement of this case.

If we can show that Mr. Young had inside [907] information—legitimately obtained, it is true, but, nevertheless, information concerning the value of the I. D. S. stock, and that he had it in advance of these published formal statements about which Mr. Carter testified, then it shows very clearly that he was taking advantage of his knowledge of the situation because of the fact that he had control of—

[fol. 1895] [908] The Referee: Why don't you ask him that—

Mr. Graubard: I asked what Mr. Young—

The Referee: I am not going to allow a broad question like that. The question you asked the witness was, "Did Mr. Young discuss any propositions with you, and what propositions were they?"

Put the question to him directly, that you spoke about now, that now concerns itself with the proposed settlement here.

Mr. Graubard: Your Honor, I am making the best possible use of this witness. He was not present in 1949 and 1950 and, therefore, I am doing the best I can.

The Referee: That is not my fault.

Mr. Graubard: All I can do with this witness, Your Honor, who was put on by the proponents of the settlement, would be to show that when this witness was with Alleghany that Mr. Young did have information of the activities of I. D. S. in advance of any public statements and, therefore, that substantiates this first cause of action to a tremendous extent.

[909] By doing this I am relating these questions, Your Honor, to a cause of action which today is worth, I believe, in excess of $15,000,000 and, therefore, bears directly on the reasonableness of this settlement.

[fol. 1896] The Referee: Ask him the question, but not the one that I have disallowed.

By Mr. Graubard:

Q. Has Mr. Young ever indicated to you that he received information concerning transactions of I. D. S. in advance of a formal publication of such transactions, by I. D. S.?

Mr. Daly: I object to the question.

The Referee: I will let him answer it, if he can.

Q. (To witness) Yes or no? A. No, because I am taking—

The Referee: (To Witness) "No" is the answer.

The Witness: There is a difference, Mr. Referee, that I would like to explain to you; and if you do not want it in the record—

The Referee: Go ahead.

[910] The Witness: When you say, "transaction", talking about public financings, I am sure that you are referring to financings of the company.

The answer to that is "No."

By Mr. Graubard:

Q. The extent to which you mean transactions, financial statements, or financial positions of I. D. S. A. The transactions that I referred to in my previous testimony, that

[fol. 1897] Mr. Young has asked me to take up with Mr. Fitzsimmons, and has discussed with me, are not of that nature, they are of proposed broad policy questions in I. D. S., in the main; and Mr. Young has indicated, on these minor or technical and detailed questions, that he does not even want to hear about them.

Q. Are you aware of whether Mr. Young maintains a personal file relating to I. D. S.?

The Referee: (To witness) Are you aware? Yes or no?

A. No.

• • •

[fol. 1898]

[1244] SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

Bar Association
42 West 44th Street,
New York, N. Y.,

October 31, 1955,
10:30 a. m.

Before:

HON. ROBERT J. FITZSIMMONS,
Referee.

• • •

[1412] Q. You have received a subpoena, I understand? A. Yes, I received a subpoena at noon today from Mr. Kahan and Mr. Bijur.

Mr. Graubard:

[fol. 1899] I was advised that a subpoena had been served upon Mr. Wallace, a subpoena which bore your signature, sir.

The Referee: He has it.

Mr. Graubard: And that this subpoena is wide in its terms, broad enough in fact to cover a large number of records which I had planned to request Mr. Wallace to produce in court directly.

Under the circumstances I would make this suggestion, sir: if these records are to be [1413] produced in court pursuant to this subpoena, I should like the privilege of examining these records before proceeding with the examination of Mr. Wallace, so that I may, for example, select from these minutes those statements which relate to items such as the discussion of the sale of the New York Central or the discussion of the sale of the I. D. S. common stock.

• • •

[1414] Mr. Graubard: I shall not do that. I would like to advise Mr. Wallace now, sir, of the additional documents that I would like to have produced in regard to which I would like to examine him further.

By Mr. Graubard:

Q. First, Mr. Wallace, have you produced any documents of Alleghany whatsoever bearing on these causes of [fol. 1900] action, and allowed general counsel for the plaintiffs to have access to these documents? A. Yes.

Q. Have you a list of such documents? A. No.

Q. Can you advice us which documents these were? A. No. I believe I gave them to Mr. Daly or Mr. Scott and they in turn gave them to general counsel, and I don't know what they have and what Lord, Day & [1415] Lord had. I just don't know.

Q. Do you know which of these documents you turned over to Lord, Day & Lord? Did you get a receipt? A. No, I trust them implicitly. I didn't ask for it.

Q. Will you produce in court tomorrow all of such documents, Mr. Wallace?

Mr. Daly: What you are asking that I produce is all the documents that have been turned over to my office. I don't know whether I can do it by tomorrow.

The Referee: He will do the best he can and he will have some of them here tomorrow morning.

Mr. Graubard: I want to make it clear now, Your Honor, that I intend to have the benefit of seeing all these documents on behalf of the stockholders of Alleghany, to the same extent that the defendants who are being sued by Alleghany have had.

• • •

[fol. 1901]

[1416] SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

[SAME TITLE]

Bar Association,
42 West 44th Street,
New York, N. Y.,

November 1, 1955,
10:30 a. m.

Before:

HON. ROBERT J. FITZSIMMONS,
Referee.

• • •

[1421] The Referee: Before Mr. Clark goes on, did you, Mr. Graubard, receive the papers that you were looking for? Is this witness, Mr. Clark, one of those that you need the papers for, that you requested yesterday in order to properly cross-examine?

Mr. Graubard: It would be very helpful if we had those papers. I do not know what Mr. Clark is going to testify with regard to—

• • •

[fol. 1902] [1423] Mr. Graubard: I think, sir, we will want the information requested yesterday of Mr. Wallace.

Whether or not it will be—

The Referee: Let us stop there.

Mr. Wallace, did you do anything over last night with respect to getting the material that Mr. Graubard requested?

Mr. Wallace: I started getting the files, Mr. Referee, and I will be able to produce them on November 3rd.

The Referee: May I make a suggestion to you. First let me ask you a question.

Prior to the stipulation of settlement being signed, were certain papers given, let us say, by you to Mr. Pomerantz and Mr. Haudek for their use in considering the settlement?

Mr. Wallace: No, sir.

The Referee: Were any papers given by you to Mr. Pomerantz or Mr. Haudek, or that firm, in connection with, let us say, the examination before trial of Mr. Young?

[1424] Mr. Wallace: I do not believe so, sir.

Mr. Haudek: Your Honor, I may perhaps be able to answer that.

The Referee: Go ahead, Mr. Haudek.

Mr. Haudek: We received our papers from Lord, Day & Lord.

Mr. Daly: From me; Mr. Wallace did not give them anything directly.

[fol. 1903] The Referee: You did receive certain papers, Mr. Haudek?

Mr. Haudek: Numerous documents, and part of them were marked as exhibits in the depositions before trial, and part of them were not so marked.

Now, most of those papers that we received have already been introduced at these hearings.

There are just a few more papers left, which I expect to offer at the earliest opening that I will get between witnesses.

The Referee: Were there some papers that you looked at that you discarded, that you did not put into evidence?

Mr. Haudek: Yes, sir.

The Referee: That you made no use of?

[1425] Mr. Haudek: That is right. There are some that I did not put into evidence, and that I do not propose to put into evidence, because they are clearly and completely irrelevant.

Now, if Mr. Graubard is anxious to look at them, I will be very happy to show them to him.

The Referee: Will you do that please, during the recess, Mr. Haudek?

Mr. Haudek: Let me suggest, if I may, the following: I would like to offer those papers that we intend to offer, and then to show Mr. Graubard what I have received and what I have not offered.

The Referee: All right, because he is entitled to make up his mind as to whether he considers them material [fol. 1904] or immaterial to the inquiry we are making here.

Mr. Graubard: Thank you, sir.

I should also like to know which papers Mr. Daly received from the Alleghany Corporation files which he did not turn over to Mr. Haudek.

Mr. Daly: I do not think that we did.

[1426] What we did, or what Mr. Scott did, was to go through the various files with Mr. Wallace and picked out or had copies made of a lot of things.

I do not think we got any of the originals, we had had copies made; and I think that everything that we got from Alleghany and, also, for the examination before trial and the settlement proceedings, copies were turned over to Mr. Haudek.

I will go through the files again and see if there is anything. I will really have to consult with Mr. Haudek, because I really do not know what he does not have that I may have.

Then, of course, there are a couple of cabinets over at our office, Mr. Wallace, and papers, that we never made copies of.

Mr. Graubard: I should like—

The Referee: Before you tell me what is on your mind, Mr. Graubard.

With that exchange of thoughts, let me say this:

That after you hear Mr. Clark testify this [1427] morning, if there is something else that suggests to your mind, in the way of a paper or exhibit that you [fol. 1905] think is necessary for us to consider here, we will speak about it at the time, and we will try to get that for you.

Mr. Graubard: All right, sir.

• • •

[1548] *By Mr. Kazon:*

Q. As a director of I. D. S. you would be in a position now to find out whether there are in the files of I. D. S. any monthly earnings statements to the company during the first three months of 1950, would you not?

The Referee: I will sustain that objection.

• • •

[1588] The Referee: Go ahead.

Mr. Kazon: In the depositions taken by Mr. Pomerantz some request was made as to monthly earnings statements of I. D. S. during the period [1559] of 1950.

I wonder if the Murchison defendants, who have, at least, statutory control, and might possibly be able to do it, whether they would be in a position to have a search made of the files of I. D. S. at this time and produce them for this hearing?

Mr. Adams: We will take it under advisement.

Mr. Wallace: Quarterly.

Mr. Adams: Quarterly statements; we will take it under advisement at this time.

[fol. 1906] Mr. Graubard: No, no.

May I add to that, sir?

The Referee: Yes, you may.

Mr. Graubard: The request was made for the monthly statements for the years 1949 and 1950; and there was testimony from Mr. Young in the record to the effect that Mr. Purcell received those, discussed the data with Mr. Young, but that a search of the records of Alleghany Corporation did not disclose the existence of these monthly reports; and Mr. Young stated that he [1560] thought that Mr. Purcell may have removed those records at the time he went over to I. D. S.

Mr. Wallace: I would like to point out that if there were any reports they were probably quarterly in nature.

Mr. Graubard: I am referring specifically to Mr. Young's testimony in regard to monthly reports; and I might say—

Mr. Daly: You correctly quoted the testimony, as I recall it.

Mr. Graubard: Thank you.

The Referee: All right. You have made a statement, Mr. Graubard, and your request is, will they produce those.

How about it? Who has charge of those records?

Mr. Adams: I have.

The Referee: What do you say.

[fol. 1907] Mr. Adams: To the extent that I have a cousin first removed from I. D. S., I will take it under advisement and advise you as soon as I can.

Mr. Graubard: I want to thank Mr. Adams; [1561] although I would like to tell the court that Mr. Adams' words are precisely the same as those of Mr. Daly, when the same request was made of him several months ago.

Has Mr. Daly reached a decision in regard to that request? As yet has he reached a decision in regard to that?

Mr. Daly: I do not have them.

The Referee: Off the record.

(Discussion off the record.)

Mr. Graubard: Your Honor, before we recess for the day I think that it would be expedient and helpful to our next hearings if we could ascertain whether or not Alleghany, through the person of Mr. Wallace, will have available on Thursday the records which have been requested, first, by the subpoena—which I assume will be here; and, second, by the informal request made of him by me previously.

Mr. Wallace: We will have them.

I have only one question: who is going to pay for the truck?

• • •

[fol. 1908]

[1565] SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

Bar Association,
42 West 44th Street,
New York, N. Y.,

November 3, 1955,
10:30 a. m.

Before:

HON. ROBERT J. FITZSIMMONS,
Referee.

Appearances:

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[1609] Mr. Kahan: Had that previously been marked in evidence, Mr. Daly?

Mr. Daly: I do not think so.

Mr. Kahan: I mean, in the depositions before trial?

Mr. Daly: No, none of these that I am now offering were previously marked. Everything that was marked [fol. 1909] at the depositions has gone into evidence here, except for the three exhibits that I referred to.

• • •

By Mr. Daly:

Q. Mr. Wallace, I show you what purports to be a photostatic copy of a letter from J. J. Anzalone, to Alleghany Corporation, of January 20, 1950, and ask you if that is a true copy thereof (handing document to the witness)? [1610] A. (Examining same) Yes, sir; this is a photostatic copy made of an original letter in the files of Alleghany Corporation.

Mr. Kahan: Can you tell me, what is the date of that?

Mr. Daly: January 20, 1950. It refers to the Investors Diversified Services, and has some connection, perhaps, with the first cause of action.

Mr. Graubard: For what purpose is this being offered, Mr. Daly?

Mr. Daly: To fill out the picture. Mr. Anzalone, as you may recall, is also a participant in the I. D. S. stock.

Mr. Graubard: Is this being offered as probative of any of the data contained in here?

Mr. Daly: Yes.

Mr. Graubard: I will object to that on the ground that this is incompetent.

The Referee: The objection is overruled at this time; exception granted.

[fol. 1910] It will be received in evidence and marked Plaintiff's Exhibit 253.

[1611] (Photostatic copy of letter above referred to, submitted by Mr. Daly on behalf of Mr. Haudek, on the letterhead of Alleghany Corporation, Chrysler Building, New York 17, New York, addressed to the Alle-

ghany Corporation, signed, "J. J. Anzalone," was received in evidence and marked Plaintiffs' Exhibit 258, as of this date.)

Mr. Graubard: In view of Your Honor's ruling, may it be understood that I shall not make any further objections, but shall reserve them for the future.

The Referee: Yes.

Mr. Daly: Except objections to the form, or some objection that if at the time it was made could be cured.

By Mr. Daly:

Q. I show you what purports to be a copy of a memo dated April 4, 1950, from J. J. Anzalone to Allan P. Kirby, and ask you if that is a true copy taken from your file (handing document to the witness)? A. (Examining same). Yes, sir; it is a true copy of the memorandum.

Mr. Daly: I offer it in evidence.

* * *

[1626] whether this is a true copy of excerpts from that meeting of the board of directors (handing document to the witness)? A. (Examining same) Yes, sir; this is a true excerpt from the minutes of the meeting of the board of directors of May 17, 1949, the board of directors of the Alleghany Corporation.

Q. And that has been certified by you as secretary? A. Yes, sir; it has.

Mr. Daly: I offer it in evidence.

May I say that this is the minute of the board of directors of Alleghany Corporation in connection with acquisition of Investors Diversified Services by Alleghany from Messrs. Camble, Roach and Crabb.

Mr. Kahan: Off the record, please.

The Referee: Off the record.

(Discussion off the record.)

The Referee: It will be received in evidence and marked Plaintiffs' Exhibit 268.

(Certificate of excerpt from minute of May 17, 1949, meeting of the board of directors of [1627] Alleghany Corporation, above referred to, submitted by Mr. Daly on behalf of Mr. Haudek, consisting of two pages, certified by David W. Wallace as secretary of Alleghany Corporation on the 30th day of September, 1955, and notarized on the same date by a notary public of the State of New York, was received in evidence and marked Plaintiffs' Exhibit 268, as of this date.)

By Mr. Daly:

* * *

Q. Mr. Wallace, I show you what purports to be a photostatic copy of a letter addressed to Mr. Robert W. Purcell, from Burgess, Fulton & Fullmer, dated May 19, 1949; together with a typewritten copy of a letter purportedly from R. W. Purcell to Mr. E. E. Crabb, dated April 26, 1949, and ask you whether or not you received the originals of those from Mr. Purcell (handing documents to the witness)? A. (Examining same) The original of this letter is in the files of Alleghany Corporation.

Q. That is in the files? A. Yes, sir; and the photostat was prepared by my office.

[1628] This copy of the letter of Mr. Purcell to Mr. Crabb, of April 26, 1949, addressed to the Burgess, Fulton & Fullmer letter, the photostatic copy of that letter, dated May 19, 1949, is also in the files of the Alleghany Corporation.

Q. They have been in the files of the Alleghany Corporation for some time? A. Yes; and I take it approximately since the time indicated in the letter.

Mr. Daly: I will offer those two letters in evidence.

The Referee: They will be received in evidence and marked Plaintiffs' Exhibit 269-A and B.

[fol. 1911] (Photostatic copy of letter on the letterhead of Burgess, Fulton & Fullmer, attorneys and counsellors, 1250 Terminal Tower Building, Cleveland, Ohio, dated May 19, 1949, addressed to Mr.

Robert W. Purcell, 3600 Terminal Tower, Cleveland, Ohio, re: Investors Diversified Services, Inc., signed, "Burgess, Fulton & Fullmer, by R. F. Fullmer"; together with copy of letter attached, dated April [1629] 26, 1949, from R. W. Purcell to Mr. E. E. Crabb, 200 Roanoke Building, Minneapolis, Minnesota, both submitted by Mr. Daly on behalf of Mr. Haudek, were received in evidence and marked Plaintiffs' Exhibits 269-A and B, as of this date.)

By Mr. Daly:

Q. Mr. Wallace, I show you two photostatic sheets, one of which is headed, "No. 9188—Alleghany Corporation—Cash Paid Voucher," and I will ask you first whether the two sheets are, in reality, photostats of the back and front of one document (handing photostatic copy of document to the witness)? A. (Examining same) Yes, sir; these two sheets represent a photostatic copy of a voucher in the files of the treasurer's office of Alleghany Corporation, the voucher being dated July 24, 1950, and concerning the purchase of 3034 shares of Investors Diversified Services, Inc. common (voting) stock from Mr. E. E. Crabb at a price of $20 per share.

[fol. 1912] The voucher is initialed by Mr. Anzalone and Mr. Peckham.

Mr. Daly: I offer it in evidence.

[1630] (Photostatic copy of voucher above referred to, submitted by Mr. Daly on behalf of Mr. Haudek, entitled, "No. 9188—Alleghany Corporation—Cash Paid Voucher," dated July 24, 1950, covering the purchase of 3034 shares of Investors Diversified Services, Inc. common (voting) stock at $20 per share by Alleghany Corporation from Earl E. Crabb, consisting of two pages, were received in evidence and marked Plaintiffs' Exhibit 270, as of this date.)

By Mr. Daly:

Q. I show you, Mr. Wallace, what purports to be a photostatic copy of a transfer slip from the Manufacturers Trust Company, No. D 23244, and ask you if that is a true photostatic copy of a transfer slip taken from the files of the Alleghany Corporation (handing photostatic copy of document to the witness)? A. (Examining same) Yes, sir.

This transfer slip came from our files. It signifies the receipt by Manufacturers Trust Company for the Alleghany account of 3834 shares of I. D. S. common (voting) stock from the account of Mr. E. E. Crabb from the First National Bank of Minneapolis.

[1631] Mr. Daly: I offer it in evidence.

[fol. 1913] The Referee: It will be received in evidence and marked Plaintiffs' Exhibit 271.

(Photostatic copy of transfer slip above referred to, submitted by Mr. Daly on behalf of Mr. Haudek, taken from the files of Alleghany Corporation, entitled, "Manufacturers Trust Company—No. D 23244—from First National Bank of Minneapolis, against payment, A C Mr. Earl E. Crabb," was received in evidence and marked Plaintiffs' Exhibit 271, as of this date.)

• • •

[1634] Mr. Gaubard: So far as you know, did Mr. Kenealy send you everything you asked him to send you, with regard to I. D. S.?

The Witness: Repeat the question.

Mr. Graubard: So far as you know, did Mr. Kenealy send to you all the information which you requested of him?

The Witness: On the stock split?

Mr. Graubard: On anything regarding I. D. S. and the causes of action in this case.

The Witness: I do not understand the question.

Mr. Graubard: Did you ask Mr. Kenealy for any information other than information relating to the stock split of 1953?

[1665] The Witness: I asked him for annual reports and other data; yes, sir.

[fol. 1914] Mr. Graubard: Did he send you everything that you requested of him?

The Witness: Well, I don't know. I believe he did, just as I believe that that is a correct extract from the minutes.

• • •

[1668] *By Mr. Daly:*

Q. Did you request and receive from I. D. S. a record of the 1949 quarterly earnings, the combined earnings of I. D. S. and subsidiaries? A. Yes; I did, sir.

Q. I show you this paper, Mr. Wallace, and ask you whether that accurately represents the information you received from I. D. S. with respect to the 1949 quarterly earnings, combined earnings of I. D. S. and subsidiaries (handing document to the witness)? A. (Examining same) Yes; it does. This information was given to me by Mr. Norman Wang, vice [1669] president and comptroller of I. D. S., and represents the quarterly earnings of I. D. S., combined with its subsidiaries, for the year 1949.

I might point out that this was a quarterly deficit for the first quarter.

Mr. Daly: I offer it in evidence.

Mr. Graubard: May I inquire of the witness as to when this sheet was received?

The Referee: Yes; you may.

The Witness: I think three or four months ago.

[fol. 1915] Mr. Graubard: Mr. Wallace, did you request this information of Investors Diversified Services, Inc?

The Witness: Yes, sir; I requested it.

Mr. Graubard: Did you request of I. D. S. that they submit to you the actual quarterly statements for 1949?

The Witness: Mr. Graubard, contrary to what Mr. Carter testified to, as I recall, I. D. S. had no quarterly

statements, to the best of my knowledge. They put out during that period semi-annual statements, but not quarterly statements.

Mr. Daly: I think they do report to Moody's [1670] Industrials their quarterly earnings.

The Witness: I think that is true.

They make quarterly reports to Moody's Industrials of their earnings, which would be just about like that; but they do not put out, you know, a quarterly statement, per se.

Mr. Graubard: (To Witness) You are aware of Mr. Young's testimony in his deposition that he did receive quarterly statements of I. D. S.?

The Witness: I am aware of what Mr. Young said, but that is the most I know, Mr. Graubard.

Mr. Graubard: Did you request quarterly statements from Investors Diversified Services, Inc.?

The Witness: I requested quarterly statements from I. D. S., as I recall, and was told that there were no quarterly statements.

[fol. 1916] Then I requested the quarterly earnings per share of the stock, and that is what I received.

As Mr. Daly refreshes my recollection, I do recall that they made some sort of a release of quarterly earnings to Moody's, but it was an informal release, as I understand it, and I can [1671] inquire further into that before the next proceeding.

But that is all I know at the present time, Mr. Graubard.

Mr. Graubard: I object to the introduction in evidence of this sheet.

The Referee: I will take it subject to a motion by counsel to strike it out at the end of the entire case.

It will be received in evidence and marked Plaintiffs' Exhibit 292.

(Document above referred to, submitted by Mr. Daly on behalf of Mr. Haudek, entitled, "The follow-

ing information was obtained from Mr. Norman Waag of Investors Diversified Services, Inc.—1949 quarterly earnings: (Combined earnings of I. D. S. and subsidiaries)," was received in evidence and marked Plaintiffs' Exhibit 292, as of this Date.)

Mr. Daly: May I, for the record, say that Plaintiffs' Exhibit 292, which has just been marked in evidence, ties in with Exhibit 97, which has already been offered and received in evidence, [1672] and which shows the [fol. 1917] same earnings, except that it does not break it down as to earnings per share.

By Mr. Daly:

Q. Did you also request from I. D. S. the combined earnings of I. D. S. and subsidiary companies for the last quarter of 1949, the first quarter of 1950, and the first quarter of 1954? A. I did, sir.

Q. And, with that information received, did you make a computation showing that information, plus the dollar per share earnings (handing document to the witness)? A. (Examining same) No; all this information, including the per share computations, were made by Mr. Norman Waag, vice president and comptroller of I. D. S., and telephoned to my office on October 10, 1955, I believe.

Q. Was that a true copy? A. This is a true copy.

Q. Of the information you received? A. Of the information we received over the telephone; that is correct.

[1673] Mr. Daly: I offer it in evidence.

Mr. Graubard: May I inquire of the witness as to whether he also received the earnings of I. D. S. itself?

The Referee: You may.

The Witness: No, sir; I asked for the combined earnings, and that is what I got.

Mr. Daly (To Witness): They are always reported on a combined basis?

The Witness: They are always reported on a combined basis. That combines I. D. S. and I. S. A.

[fol. 1918] Actually, Mr. Graubard, it is my belief that if you had I. D. S. alone you would have deficits. I. S. A. is the one that is making the money.

Mr. Graubard (To Witness): You do not mean I. S. A., you mean the other subsidiaries, Mr. Wallace, do you not?

The Witness: I think I. S. A. is the only subsidiary, is it not? The others are affiliates.

Mr. Daly: If you will look at the annual balance sheets it will be clear.

The Witness: I will have to refresh my recollec-
[1674] tion.

Mr. Graubard: I wish you would, before next week.

Mr. Daly: You can refresh your own recollection by looking at the balance sheet. It would make it very clear to you.

Mr. Graubard: I have the same objection; in fact, more so, since there are calculations on this for which we have no foundation.

We actually do not know on what this is based.

I take it that your ruling will be the same, sir?

The Referee: The same ruling.

Mr. Daly: May I say that that exhibit likewise ties in with Exhibit 97.

The Referee: It will be received in evidence and marked Plaintiffs' Exhibit 293.

(Document above referred to, submitted by Mr. Daly on behalf of Mr. Haudek, dated October 10, 1955, [fol. 1919] entitled, "Combined Earnings of I. D. S. and Subsidiary Companies as dictated by Mr. Norman Waag—From Investors Diversified Services, Inc.," was received in evidence and marked Plaintiffs' [1675] Exhibit 293, as of this date.)

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[fol. 1920]

[1704] SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

Bar Association,
42 West 44th Street,
New York, N. Y.

November 10, 1955,
10:30 a. m.

Before:

HON. ROBERT J. FITZSIMMONS,
Referee.

• • •

[1709] DAVID W. WALLACE resumed and testified further as follows:

Direct Examination by Mr. Daly (Continued):

Q. Did you, at the close of this last adjournment, Mr. Wallace, telephone I. D. S. and get the earnings for the first four months of 1950 of I. D. S. and its wholly owned subsidiaries? A. Yes, I did; and I have them here.

[fol. 1921] Q. Have you made a copy of such earnings, as you received them over the telephone? A. Yes, sir.

Mr. Daly: I offer it in evidence.

Mr. Graubard: (To Witness) Is this for I. D. S. alone, or is it a consolidated report, including its subsidiaries?

The Witness: It is for both I. D. S. alone [1710] and for I. D. S. and its subsidiaries. There are two columns of figures. The first column is entitled "Earnings of I. D. S.," and the third column is entitled "Earnings of I. D. S. and Wholly Owned Subsidiaries."

The Referee: Off the record.

(Discussion off the record.)

The Referee: It will be received in evidence and marked Plaintiffs' Exhibit 301.

(Document above referred to, submitted by Mr. Daly on behalf of Mr. Haudek, entitled,

"The following figures were obtained from Mr. Norman Waag of Investors Diversified Services, Inc." was received in evidence and marked Plaintiffs' Exhibit 301, as of this date.)

• • •

[1721] Mr. Daly: You were told that it was here in court.

[fol. 1922] Q. I was told that this specific file was in this court? A. I believe so.

Q. Who told me? A. I believe I did, for one.

Q. Do you have that file here today? A. I do, sir.

Q. May I have it? A. Yes, you may.

The Referee: Off the record.

(Discussion off the record.)

Mr. Daly: May I say, on the record, that these files have been in the courtroom for the last two days of hearing, and they have been available for inspection during all that time.

Mr. Graubard: I think the record should also show that examination of these files was deferred on the last hearing date at the request of the proponents because they desired to introduce a few more records.

[1722] This introduction of records was, we were told, to take just a few hours, the morning session. Actually, the production of these records and their introduction into evidence took more than a full day of court.

Mr. Daly: We did not realize that there were so many records that had not been marked in evidence.

Mr. Graubard: We are going into this only because Mr. Daly wants this on the record.

I would like to have the record show this: that owing to inadvertence or misunderstanding the 1949 I. D. S. [fol. 1923] files of Alleghany are not in court today. An arrangement has been made with Mr. Wallace, however, with the approval of Mr. Daly, for access to these records to be had at the Alleghany office on this coming Monday, and that Mr. Wallace will notify Mr. Kahan and myself of when—

Mr. Daly: We will notify Mr. Kahan, and Mr. Kahan can notify you.

Mr. Graubard: All right, Mr. Daly has, with his usual courtesy corrected me.

[1723] Mr. Referee, I have asked for these records, too, and I would like Mr. Wallace to notify me directly when they will be available.

(To Witness) Will you notify me when they will be available, Mr. Wallace?

The Witness: Yes, I will; I will notify you on Monday.

The Referee: All right, proceed.

Mr. Kahan: I would rather see 1949 before going into 1950.

At this time I am only concerned with the 1949 records.

I would suggest that if there are earlier records, Mr. Wallace and if the 1949 transaction that I have referred to goes back to 1948 or earlier, in the Alleghany records, I would like that file, too.

The Witness: I would suggest that you have all those files here now, if you want to see them.

[fol. 1924] Mr. Kahan: No, I cannot look at those until I have explored this.

The Referee: All right.

• • •

[1738] Mr. Graubard: Sir, may the record show that we have reached an agreement with Mr. Daly and Mr.

Wallace wherein the records requested by us will be made available to us tomorrow in the outside room, and that, accordingly, with your permission, we will proceed with the cross-examination now, with the understanding that we have a reservation for further cross-examination based upon such evidence as the documents may indicate.

* * *

[1750] Mr. Kahan: As to the I. D. S. transaction, Your Honor, I want the history of that transaction as described in the corporate minutes; and I would ask you to bear that in mind when the data are submitted to you.

The Referee: All right, Mr. Kahan, I have your position.

* * * * *

[1812] Q. You testified, Mr. Wallace—and I am referring to page 901 of the transcript—"When he"—meaning Mr. Purcell—"left to go out to I. D. S. he took with him a great many papers."

[fol. 1925] Have you made any inquiry of Mr. Purcell since that date, as to what papers he took with him, when he left Alleghany? A. No.; I have not made any real inquiry from Mr. Purcell as to just what papers he took with him.

Q. You know you testified on page 901, immediately prior to this quote, that Mr. Purcell was the officer who, until 1953, was directly in charge of Alleghany's investment in I. D. S. A. That's right.

Q. Have you endeavored to recover these files from Alleghany? A. Not yet, no.

[1813] Mr. Graubard: No, Your Honor, there is a Mr. Edgar Allan Poe in this case somewhere, and I do not like to refer to the case—

The Referee: He is in Baltimore.

Mr. Graubard: He is here occasionally.

I do not like to refer to the case of the purloined files because of this coincidence, but these files are

most essential to show the facts, and I would like to have this witness use every effort to recover for Alleghany these files, because they refer to this very important first cause of action, the exchange by Young and Kirby of their preferred stock in Alleghany for the I. D. S. stock.

We now find that all the I. D. S. records have been taken by Mr. Purcell out West some place, and the secretary of the company has not made any effort to recover these records.

[fol. 1926] The Witness: I never said all the I. D. S. records.

Mr. Daly: May I read what he did say?

"When he left to go out to I. D. S."—that is, Mr. Purcell—he took with him a great many papers. [1814] Since I have checked with I. D. S., because I do not have any such records in my file."

Mr. Graubard: Go ahead.

Mr. Daly: "They tell me that the quantity of reports that I. D. S. prepares are just staggering, and that they never had Mr. Young on a list for these reports, generally, and as to a specific report I will do my best to find out."

There was nothing said about files, nothing at all.

By Mr. Graubard:

Q. Did you do your best to find out? A. Yes, sir.

Q. What did you do? A. I told Mr. Young that I would like a list of the material he received from I. D. S., and Mr. Young made inquiry of I. D. S. and informed me that he never received statements of income from I. D. S. but did receive statements as to; I think, gross sales.

I am not certain as to that, but I think so.

Q. So that you asked the principal defendant in this case to ascertain for you, the secretary of the Corporation, what happened to files which had been [1815] in the Cor-
[fol. 1927] poration's possession until Mr. Purcell left in 1953; isn't that correct? A. No; I did not.

Mr. Daly: He did not testify to that.

Q. What effort did you make to obtain the files that Mr. Purcell took in 1954?

The Referee: Papers, not files.

Mr. Daly: Yes, all he said was that Mr. Purcell took a great many papers. If you would only read the record, Mr. Graubard.

Mr. Graubard: I will accept the correction; although I want to point out to Mr. Daly that memoranda and files are referred to previously.

For this purpose I will accept "the papers."

Q. How about the papers? A. No; I did not.

Q. Will you quote do your best unquote now to ascertain whether or not you can recover those papers for Alleghany Corporation and produce them in court here? A. I will produce them for this court, if I can do it. I will ask Mr. Purcell. But Alleghany Corporation does not particularly want them. I do not see [1816] any point in them.

The Referee: What papers are they, that you particularly want?

Mr. Graubard: These are papers, sir, which we will refer to subsequently in our cross-examination, in detail, concerning the information that Mr. Young had in his possession, either directly or constructively, at [fol. 1928] the time that he arranged to exchange for himself and Mr. Kirby this I. D. S. stock for his preferred stock.

The Witness: Your Honor, I would like to say that the papers Mr. Purcell had probably would not even have been shown to Mr. Young, if the procedure that has been followed in the Corporation to date was followed then, and that is that a great deal of things go across my desk concerning Alleghany, that Mr. Young does not see, because they are detail.

The Referee: (To Witness) Are there any Alleghany files missing?

The Witness: No, sir.

The Referee: Going back to 1953.

The Witness: No Alleghany files. What I said [1817] was that if such records or other data came from I. D. S. to Mr. Purcell, that possibly such papers might have been taken with him when he went to—

The Referee: You say, "possibly"; but you did not know whether he did take many or not, or did he?

The Witness: I imagine he took some—he took some of his personal papers and papers he used, when he went to I. D. S.

Alleghany has a main file where each individual officer of the company would send down from time to time material to be put in the Alleghany file itself. [fol. 1929] Now, that file has always been undisturbed, and is the same as it was at all times.

What I am saying is that I keep some papers up in my own filing cabinets in my office, and while I am working on the papers I do not bother to send them down to the file because, just like any other file, once you send it down you do not find it again; and all I thought was perhaps Mr. Purcell had annual reports of I. D. S. and other matters that he might have taken with him [1818] when he went out to I. D. S. to assume the active role of president, I think it was, of I. D. S., at that time.

The Referee: Since we met last you did speak to Mr. Young concerning what material he received from I. D. S. in that year 1953, did you?

The Witness: Yes, sir.

The Referee: And his reply to you was what?

The Witness: He said, "I didn't receive any material as to monthly income or net income, but I did receive periodic statements as to sales and"—"sales and maturities" I think was the term he used, the information he gave me.

The Referee: Are those in the files of Alleghany?

The Witness: No, sir; they are in his own file.

Mr. Graubard: Your Honor, I object as completely and as vehemently as I can to this witness testifying

as to what might have taken place in 1953 or earlier between Mr. Purcell and Mr. Young.

The Referee: I will take that under considera-
[1819] tion. He wasn't even there.

[fol. 1930] Mr. Graubard: That is right, sir.

I am referring to the record again, and I am now referring to page 903—

Mr. Haudek: Mr. Graubard, I would like to say, for the record, that these objectionable statements came in answer to your question.

Mr. Graubard: I do not think that it was at all responsive to my questions. I am confining myself to the record.

The Referee: Regardless of how they came about, they are in the record. I will allow them to stay there.

I will give them the weight that should be accorded to them, at the proper time. I understand that he was not with the company in 1953.

Mr. Graubard: Off the record, please.

The Referee: Off the record.

(Discussion off the record.)

The Referee: All right, gentlemen, let us proceed.

By Mr. Graubard:

Q. On page 903, Mr. Wallace, you said—and [1820] I am taking this from the middle of the paragraph:

"* * * but I said I strongly suspect that when Mr. Purcell left Alleghany in 1953, he may have taken with him quite a few reports; * * *."

[fol. 1931] Mr. Daly: I would suggest that you read it from the beginning.

Mr. Graubard: All right, I will do so.

I will start from where the Referee asked the witness to answer yes or no in answer to a question of whether Mr. Wallace had checked the Alleghany files.

"The Referee: (To Witness) Yes or no.

"A. As to material coming from I. D. S.?

"Q. Yes.

"A. Other than annual reports and documents already submitted, I said, 'Yes'; but I said I strongly suspect that when Mr. Purcell left Alleghany in 1953, he may have taken with him quite a few reports; but, as you will recall, I testified this morning that Mr. Purcell was leaving to assume the duties of chairman of the board of I. D. S."

[1821] Is that properly quoted, Mr. Daly?

The Referee: There is no objection.

The Witness: I may have been in error; I think he also was in error.

The Referee: It also shows the wisdom of the Referee in asking the witness to answer yes or no.

Mr. Haudek: Unsuccessfully.

The Referee: Unsuccessfully, of course.

By Mr. Graubard:

Q. Have you asked Mr. Purcell whether or not he did take any reports with him in 1953? A. No.

[fol. 1932] Q. Will you do so? A. Yes.

Q. Will you do so directly, Mr. Wallace, and not through the intermediary of any defendant in this action? A. Yes; if I can locate Mr. Purcell, I will do so.

Q. Do you know whether it is Mr. Purcell's custom to come to New York City frequently? A. I know he has a home in up-state New York.

[1822] Q. Do you know where Mr. Purcell's office is? A. At the present time?

Q. Yes. A. No.

* * *

By Mr. Graubard:

Q. Do you know whether Mr. Purcell is still acting as a representative of Alleghany Corporation on the board of I. D. S.? A. I do not know whether he ever was a representative of Alleghany Corporation on the board of I. D. S., after he left Alleghany.

Q. You do know, of course, that after he left Alleghany—at least until the end of 1954, or shortly thereafter—Alleghany Corporation did have control of I. D. S., did it not? A. Yes, sir.

Mr. Graubard: And I want the court to know * * *

By Mr. Graubard:

Q. Do you know whether Mr. Purcell is still acting as a representative of Alleghany Corporation on the board of I. D. S.? A. I do not know whether he ever was a representative of Alleghany Corporation on the board of I. D. S., after he left Alleghany.

Q. You do know, of course, that after he left Alleghany—at least until the end of 1954, or shortly thereafter—Alleghany Corporation did have control of I. D. S., did it not? A. Yes, sir.

Mr. Graubard: And I want the court to know [1823] I appreciate the fact that the witness did not ask me what I mean by "control."

Q. So far as you know, Mr. Wallace, is there any correspondence between Mr. Purcell and Alleghany Corporation, [fol. 1933] concerning the affairs of I. D. S., at the present time? A. So far as I know, there is not.

Q. Do you know whether there was any such correspondence during the year 1954? A. No; but I do not recall ever having seen any.

Q. And the same is true of all the months of 1955? A. Yes, sir.

Q. Do you know whether Mr. Purcell ever communicated, by telephone or personally, with Mr. Young, Mr. Deegan, or any other officers of Alleghany Corporation, concerning the affairs of I. D. S., during the years 1954 to date? A. With anybody else? I do not know, sir.

Q. Or Mr. Young? A. I do not know.

* * *

[1825] Q. By the way, in order to make the record complete, will you please fall back on your memory and try to answer this question:

Did you ever discuss with Mr. Purcell, in any way, the 1950 I. D. S.-Alleghany transaction? A. I may have; but I do not recall now.

Q. On page 902 of the transcript, Mr. Wallace—and this goes back to October 13th—I further inquired [1826] of you:

> "Q. Did they"—meaning I. D. S.—"have Mr. Purcell on their list, in 1949? A. I will find that out. As to what reports, as to the value of securities?
>
> [fol. 1934] "Q. Anything bearing on the value of securities."

Did you do anything to find out? A. I must say— I am quite embarrassed to say this—I have not. It just slipped my mind.

But I will do it now.

Q. I wish to refer to Plaintiffs' Exhibit 4, the deposition taken of Robert R. Young by general counsel for the plaintiffs on March 29 and March 30, 1955.

On page 8 the following question was put by Mr. Haudek to Mr. Young:

> "Q. Do you recall whether Mr. Purcell prepared any memoranda or reports either for you or for the board of Alleghany? A. Offhand, I have no recollection of memoranda which were prepared.
>
> "Q. Would please cause a check to be made [1827] in the records of the company, both as to the statements which you may have received from others, and as to any memoranda that may have been submitted by Mr. Purcell? A. Yes."

Now, Mr. Wallace, were you ever requested by Robert R. Young to make an examination of the records of Alleghany for such statements or memoranda? A. Mr. Young told me, after he made his deposition, to cooperate with Mr. Haudek and Mr. Daly with respect to obtaining for them any and all documents that he had promised.

[fol. 1935] Q. Good.

Now, Mr. Wallace, will you please answer my question. A. What is that?

Q. Did you ever cause any search to be made—in fact, did you ever search the files of Alleghany Corporation for these statements or memoranda? A. Of Mr. Purcell?

Q. This may be easier, if you want to read the testimony. A. I know what you are referring to.

[1828] I have looked through the memoranda, etcetera, concerning the 1953 and 1954 transactions; I have looked through the I. D. S. general files; and I have found nothing of any import. I could produce those files.

Q. Do you think you made a thorough check of the records of the company? Are you satisfied that you did? A. Of the records of the company? I most certainly am not.

Q. Of the records of Alleghany, in order to determine whether there were present in those records any statements or memoranda which may have been submitted to Mr. Purcell, concerning I. D. S. A. I am satisfied that I looked in the proper places. The records of Alleghany corporation take up a very large room, consisting of over 60 filing cabinets of four drawers each, and I looked in the drawers where I thought the I. D. S. material reposed, and I am satisfied to that extent; but to the extent of whether there were any misfilings by a file clerk, I just cannot vouch for that.

Q. Did you also look for the 1949 data? [1829] A. No; I did not.

[fol. 1936] Q. Did you ever submit any of these data to Mr. Haudek or to his associates in this action? A. I submitted a great deal of data to them.

Q. I am referring now to the data concerning I. D. S. memoranda or statements. A. For what period?

Q. From 1949, 1950, 1953, 1954. A. I gave the data concerning those years, yes.

Q. Including 1949? A. I believe I did, yes.

Q. Do you have that data here, of 1949? A. I think that the bulk of it has been put in evidence.

Q. You will check again, Mr. Wallace, in order to see whether or not there was any such data which were not put into evidence, but which are in the files of Alleghany? A. Yes, I will, sir.

Q. The 1950 exchange of stock was the subject of the stockholders' ratification, and the stockholders were asked for proxy statements; is that correct? [1830] A. No; they were asked for proxies.

Q. Proxies? A. That is right.

Q. And the corporation did file data concerning these proxies with the Securities and Exchange Commission? A. Concerning the proxy statement, notice, and form of proxy to be used in connection with the annual meeting of 1950 were filed with the Securities and Exchange Commission for clearance, yes, sir.

Q. Was that handled directly by house counsel of Alleghany Corporation, or by an outside law firm? A. I would imagine it was handled by house counsel.

[fol. 1937] Q. Whether it was handled by house counsel or an outside law firm, would you undertake to submit for examination all the correspondence and exhibits relating to this transaction, correspondence between the Securities and Exchange Commission and Alleghany or its counsel? A. Yes, sir. I think most of them are in those papers that I produced on November 3rd.

[1831] I produced the entire file pocket concerning the 1950 annual meeting, and I believe they would be in there; but, frankly, I did not go through those things carefully enough to remember whether it was in there or not; and if it was outside counsel I will endeavor to find out who it was and get their correspondence with the Securities and Exchange Commission on this material.

Q. Do you think, Mr. Wallace, that without too much difficulty you can have your files checked further to see whether there are any other data there which we might look at tomorrow? A. Yes, I will do that; but I know that there is a good bulk of it right in that pocket.

Q. And if you ascertain that this correspondence and these files are in the hands of counsel, outside counsel, would you request counsel to turn its files over to you, to be produced? A. Yes, sir, I will, the files concerning this correspondence with the Securities and Exchange Commission.

Q. Including the correspondence, Mr. Wallace.

I am talking about the correspondence between the [1832] Securities and Exchange Commission and Alleghany Corporation, relating to this proxy statement. A. Yes, sir.

[fol. 1938] Q. Is that clear now? A. Yes, I will, sir.

Q. Thank you.

Was there any correspondence in 1955, Mr. Wallace, between Alleghany Corporation and the Securities and Exchange Commission, relating to this same 1950 transaction? A. Relating to the 1950 transaction, Mr. Graubard?

Q. Yes. A. In 1955?

Q. Yes, in 1955. A. I do not think that there was, sir. I certainly know of no correspondence to that effect.

Q. I had better make the question a little clearer.

I understand that there was some correspondence with the Securities and Exchange Commission arising [1833] out of a proposed proxy statement that Mr. Phillips wanted to issue to stockholders, and that reference was made to the 1950 transaction in this correspondence. A. Reference was made to the 1950 transaction in Mr. Phillips' proposed proxy statement to be sent to stockholders.

We had correspondence with the SEC—I do not remember the content of that—and the bulk of the correspondence was between the SEC and White and Case on behalf of Alleghany Corporation.

Q. I am limiting myself now just to that portion of the correspondence which relates to the 1950 transaction, Mr. Wallace.

Would you please obtain that correspondence, in order to round out the file, and submit it for examination? A. Not tomorrow.

[fol. 1939] Q. As soon as possible. A. As soon as possible; yes, sir.

Q. On page 9 of Mr. Young's deposition, line 4, the following question appears:

> "Would you please cause a check to be made of the records to ascertain the minutes of the [1834] board of directors or of any committee of the board dealing with the acquisition of the I. D. S. stock?"—meaning the 1949 acquisition. A. Yes, gladly."

Do you know, Mr. Wallace, whether any check was made of these reports? A. I frankly do not remember right now what I gave over to Lord, Day & Lord and what they, in turn, gave to Mr. Haudek. But I will endeavor to determine all that I furnished them with and what I have not furnished them with and be prepared to tell you.

Q. Further down on page 9, still reading from the Young deposition, the question asks that a search also be made for documents referring to market purchases.

I assume your answer would be the same in regard to a search for those records?

A. Of I.D.S.?

Q. Of Alleghany; Alleghany's records concerning market purchases of I.D.S. stock.

A. Yes; I will have to check and see what I have on that.

Mr. Daly: Let me see if I understand you.

[1835] You mean the stock that Alleghany purchased, of I.D.S., in the open market?

Mr. Graubard: That is right, open market or from private persons.

Mr. Daly: I think the record already shows what they were.

Mr. Haudek: I think Your Honor's attention should be called to the fact that these directors' minutes are Exhibit 268—I would like to check it for a minute.

The Referee: May I see Exhibit 268, please?

Mr. Bijur: I have it here.

(Whereupon, Mr. Bijur handed Exhibit 268 to Mr. Graubard.)

Mr. Graubard: Exhibit 268 is only a partial answer to that question.

I will show it to Mr. Wallace.

The Witness: I understand your request, and I know what that exhibit is, Mr. Graubard.

By Mr. Graubard:

Q. Do you recall, Mr. Wallace, that Mr. Young testified —I think you were present at that examination; is that right?

[1836] A. Yes, I was.

• • •

[fol. 1940]

[1842] SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

Bar Association,
42 West 44th Street,
New York, N. Y.

November 16, 1955,
10 a. m.

Before:

HON. ROBERT J. FITZSIMMONS,
Referee.

• • •

[1852] Mr. Graubard: Your Honor, may I say, preliminarily, that we have made a request through you of Mr. Adams, counsel for the Murchisons, which request was made some time ago, in regard to requesting I. D. S.—which his clients control—to produce certain

monthly reports and other statements of I. D. S. for the years 1949, 1950.

Mr. Adams stated that he would take that request under consideration.

[fol. 1941] I should like to know at this time, sir, since Mr. Crowley, Mr. Adams' associate is present, whether [1853] or not that request will be granted.

The Referee: Can you answer that, Mr. Crowley?

Mr. Crowley: My recollection was that Mr. Adams said that he would take the request under advisement, and as of this moment, Your Honor, I do not know anything further beyond that.

The Referee: Take it up with him during the recess.

Mr. Crowley: He will not be available during the recess, sir; he is not in the office.

The Referee: How about during the lunch hour?

Mr. Crowley: That I will endeavor to do, sir.

The Referee: All right.

Mr. Graubard: I want to advise the court, too, that we have received the cooperation of Mr. Martin and Mr. Wallace in having certain files previously requested by us made available, and that we have spent a day and a half going through these files, with additional files still to be reviewed; and I hope that we will be able to review that after the termination of today's [1854] hearing.

Mr. Bijur: On behalf of Mr. Kahan and myself I would also like to acknowledge that Mr. Martin was kind enough to produce some large files in response to the subpoena that Mr. Kahan had served, and that [fol. 1942] we were examining those at the same time.

Mr. Graubard: May I proceed with Mr. Wallace?

* * *

[1903] Q. Have you, personally, made any request of Mr. Purcell for the return of the papers and memoranda taken by Mr. Purcell in 1953? A. Yes; I have.

Q. When did you discuss this with Mr. Purcell, what did you ask him, and what did he answer? A. I said to him, "I think when you went out to I. D. S. in 1953 you took some papers relating to I. D. S. that you had then in your files, and I would either like back the papers themselves or some sort of duplicates of them, properly authenticated by him; and he said that he would undertake to get them for me, and I expect to have them shortly.

Q. Do you know how shortly? A. No, sir; but I think shortly.

Q. Did you inquire of Mr. Purcell as to whether he would be available to personally testify as to the completion of this file of papers or memoranda? A. No, I did not, Mr. Graubard.

Q. Will you make that inquiry of him, Mr. Wallace?

Mr. Daly: I do not know why we should assume that burden, why Mr. Wallace should assume that burden.

[1904] The Referee: (To Witness) If you care to, you may.

[fol. 1943] *By Mr. Graubard:*

Q. Have you ascertained whether Mr. Purcell was on the list of recipients of I. D. S. monthly reports during the year 1949, or any portion thereof? A. No; I have not. He said he does not know offhand what reports he got and what reports he did not get.

Q. Will you inquire of I. D. S., please, Mr. Wallace, as to whether Mr. Purcell was on a list of persons who were regularly to receive the reports—including the monthly reports—of I. D. S., during the years 1949 and 1950? A. Yes, sir.

Q. Will you make the same inquiry concerning Mr. Young? A. Yes, sir.

Q. Will you make the same inquiry concerning Alleghany Corporation? A. Yes, sir.

Q. And will you make the same inquiry concerning Mr. Kirby, please? [1905] A. Yes, sir.

Q. Have you made a further check of your files, Mr. Wallace, in order to determine whether or not there are any I. D. S. memoranda or statements there for the years 1949, 1950, 1953, and 1954? A. Yes, sir. I know I turned over some documents to you, and I know that there is a letter in there that refers to a report by Mr. Shipman, and in that same letter I think it refers to a report by Mr. Stiver; and we are still looking for these reports.

I just do not know what happened to them. I know I will be able to get them for you, because I have called up.

(Whereupon, Mr. Daly handed a document to the witness, which the witness examined.)

[fol. 1944] The Witness: Is that one of them?

Mr. Daly: Yes.

The Witness: We might put this in evidence.

That is not what I am referring to. This is Mr. Young's memorandum of April 19, 1949, to the board of directors. The particular one I am looking for is the Stiver report, an independent [1906] report on I. D. S., made by an outfit from Cleveland, Ohio; and I called Mr. McCartin out at I. D. S. yesterday on that thing, and asked him if he could look around in their files, because I am sure they have copies; and if he can find it, send it to them.

I am still looking for it, to see if I have it.

Mr. Graubard: Thank you.

Mr. Bijur: It that a report by A. J. Stiver to Mr. Young?

The Witness: Yes. I think Mr. Kahan made some sort of a request about that after examining the files.

Mr. Graubard: Will you please mark that.

(Document above referred to, dated April 19, 1949, entitled, "To: Alleghany Corporation board of directors—from: Robert R. Young, chairman," consisting of five pages, was received in evidence and marked Exhibit 317, as of this date.)

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[1915] *By Mr. Graubard:*

Q. Can you tell the court if there are any records in the Alleghany file room pertaining to I. D. S. transactions [fol. 1945] for the years 1949, 1950, 1953, and 1954, other than those already produced for the examination of counsel in this case, meaning the objectants' counsel in this case?

The Referee: Yes or no.

A. No.

Q. Have you made a search? A. I have had a search made. I have not, per- [1916] sonally, made a search.

Q. Who made the search? A. Our file clerk.

Q. One clerk? A. One clerk.

Q. What is his name? A. Frank Hurbant.

Q. Do you know how long a period of time he spent in making this search. A. I haven't the slightest idea.

Q. Did he advise you as to which files he searched through? A. I said to him, "Look through the files." I did not say, look through file number so and so.

Q. Did you supervise his search? A. I certainly did not.

Q. Are you satisfied that there are no more records, other than those produced, based upon his search? A. I am satisfied that there—I don't know that there is something missing, because I cannot find two documents. I cannot find the Shipman—one document, the Stiver report, I am having trouble locating; [1917] and I am satisfied to that extent, that it must be there some place.

Now, it could be that it has been misfiled; it could be that it is out of the files for some reason; but I will get a copy of that document.

[fol. 1946] The Referee: (To Witness) Otherwise, Mr. Wallace, you are satisfied that a diligent search was made?

The Witness: I am satisfied that everything has been produced that is relevant here.

By Mr. Graubard:

Q. Do you know where those files were located, physically, prior to January 19, 1954? A. Prior to January 19, 1954?

Q. Yes. A. Do I have personal knowledge?

The Referee: (To Witness) Do you know?

The Witness: Well, in Cleveland.

Q. Do you know where they were located after that [1918] date? A. Yes.

Q. Where? A. In the office of Chesapeake Laboratories up on, I think, West 109th Street.

Q. When were they moved from Chesapeake Laboratories? A. When I became secretary.

Q. On what date were they moved, Mr. Wallace, to the best of your recollection? A. Well, I cannot give you a specific date.

Q. Approximately? A. When I became secretary I told Mr. Young I found it very difficult to run the office with the files up there, and he said, "Then move them wherever it is, in your opinion, the best location."

Q. And Chesapeake Laboratories is not an affiliate or subsidiary of Alleghany, is it? A. No, sir.

[fol. 1947] The Referee: (To Witness) What is the place Chesapeake Laboratories?

The Witness: It is part of the Chesapeake [1919] Industries setup, Your Honor.

The Referee: It is not, in and of itself, a storage warehouse?

The Witness: They had storage space available, as I understand. I do not know the circumstances of why those minutes went up there first, but they were there.

By Mr. Graubard:

Q. Do you know whether there are any papers, memoranda or files pertaining to I. D. S., for the years 1949, 1950, in the possession of any counsel of Alleghany Corporation?

The Referee: (To Witness) If you know.

A. I don't know.

Q. Do you know whether Mr. Young has any such files? A. I do not know.

Q. Have you asked him? A. Mr. Young?

Q. Yes. A. No.

Q. Will you ask Mr. Young as to whether he has any such files in his possession, and be prepared to [1920] answer as soon as possible? A. You want me produce them if I have them; is that it?

Q. Yes. A. I will.

[fol. 1948] Mr. Graubard, I do not want to mislead you, but the correspondence we turned over to you on I. D. S. indicated several lawyers were involved.

Now, I do not know what they have in the way of files. I think that the Fullmer firm in Ohio was one that worked on I. D. S. matters.

Mr. Graubard: I think that is a fair answer, Your Honor, and Mr. Wallace has made it unnecessary for me to follow up along that line.

I would simply like to have recovered for Alleghany these various papers, memoranda or files which have gone out to various counsel, because they have a direct bearing on this complaint.

The Witness: Mr. Graubard, I did not mean, by my answer to indicate that we had sent material to those respective counsel.

I said there were letters, and they must have worked on Alleghany matters, and I do not know what [1921] they have by way of a file.

By Mr. Graubard:

Q. In short, Mr. Wallace, I would like to request your obtaining for Alleghany Corporation and for inspection of counsel in this case, the records—such as they may be—pertaining to I. D. S., that belong to Alleghany Corporation, from whatever source you may have to get them.

Is that clear?

[fol. 1949] Mr. Daly: You are talking about I. D. S. records that belong to I. D. S., that Alleghany has no control over.

The Referee: Let us start over again.

Mr. Graubard: I made it very clear.

I want the records that belong to Alleghany—

Mr. Daly: Let me put this on the record:

If Alleghany has any files in anybody's possession we will endeavor to get those files back.

Mr. Graubard: Thank you.

The Referee: When you said that some letters were exchanged between your office—meaning the Alleghany office—and some firm of lawyers somewhere in Ohio, you were referring to Alleghany [1922] files, Mr. Wallace, or were you referring to I. D. S.?

The Witness: I do not know. There are letters in there—frankly, Your Honor, I haven't even read the letters. I saw letterheads from lawyers.

I did not want him to think I was denying something that was in the file. I just do not know.

[1923] Mr. Graubard: May I request that all these papers be brought in, and that the court be allowed to judge the relevance of this, other than the witness.

Q. Will you do so?

The Referee: (To Witness) Bring them in, and I will look them over.

[fol. 1950] Mr. Graubard: We would like to look at them ourselves, Your Honor, unless there is a claim of privilege and privacy raised and then of course Your Honor can look at them.

[1924] Q. Have you also prepared a record of the Alleghany purchases of I. D. S. stock for the year 1949? A. I think Mr. Horton is working on that, if I recall. I will check on that, but I think I told him to start working on that.

* * *

[1938] *By Mr. Graubard*:

"Q. Did you keep, during this 1949 period, informed about the financial condition of I. D. S.? A. Generally, yes.

"Q. How did you do that? A. Almost entirely through oral conversations with Mr. Purcell, coupled with the regular monthly reports which I got from I. D. S.

"Q. You received monthly reports from I. D. S.? A. Yes. I didn't always read them, but I received them.

"Q. Were those reports in the form of financial statements? A. Yes.

"Q. Those monthly statements and reports, are they available in the files of Alleghany? A. Yes.

"Q. I would ask for their production. A. Surely."

[fol. 1951] Have you asked Mr. Young for those monthly reports, Mr. Wallace? A. I haven't undertaken to go through Mr. Young's own personal file, no.

Q. Have you asked Mr. Young for those reports? [1939] A. I asked Mr. Young what reports he got; I did not ask for the reports.

Q. Would you be good enough to ask Mr. Young to deliver such reports to you for delivery to the court here? A. I would be delighted to.

Mr. Daly: If Mr. Young has such records.

The Referee: Off the record.

(Discussion off the record.)

The Referee: On the record.

Mr. Haudek: May I, in this context, read from page 55 of Mr. Young's deposition, where Mr. Daly states:

"Mr. Wallace has advised me that he did make a search for all such reports, and there are none in the Alleghany files."

Mr. Daly: That was the reason for my statement.

Mr. Graubard: Now, Your Honor, the record shows that I have asked for these records, whether Mr. Young, in effect, will produce the records that he has got in his files.

The fact that Mr. Wallace has been unable to [1940] find these records in Alleghany's files merely supports the position that I have taken since I have learned [fol. 1952] some of these facts, to wit, that the poor Alleghany files are emaciated, they have been deprived of nourishment with regard to this 1949, 1950, transaction; and all we are trying to do is get a transfusion of files in order to restore the patient to its normal, happy condition.

Mr. Daly: May I state that I strenuously object to the statement that the files have been emasculated, and that there is no evidence of that at all in the record, and that it is merely a gratuitous statement on Mr. Graubard's part.

The Referee: Off the record.

(Discussion off the record.)

By Mr. Graubard:

Q. Did you, Mr. Wallace, inquire of Mr. Purcell, in March or April, 1955, for these records which Mr. Daly says, "may have been taken back by Mr. Purcell, and which are not in the possession of Alleghany"? A. I don't think I ever did; I think I talked [1941] to Mr. Purcell last week about these documents.

I might add that any delay in getting these are my fault, because we have been engaged in a lot of activities, and I assumed the theory of expediency in taking care of first law suits first.

Q. But you are asking Mr. Purcell for those records now; am I correct? A. Yes, sir; and I understand that we are getting them.

Q. I am happy to hear that.

[fol. 1953] Page 61, line 3:

"Q. With reference to the years 1949, 1950 and 1953, I would ask you to cause a check to be made of the minutes both of the board of directors and of the executime committee for references to the business or finances of the stock of I. D. S. A. Yes, gladly."

Now, Mr. Wallace, did you make that check? A. I turned over some minutes to Mr. Daly.

I do not know whether they were among them or what, some minutes concerning I. D. S., yes, sir.

Q. You did not personally make that check? A. Any check of the minutes was made by me personally, sir.

[1942] Q. Therefore, Mr. Wallace, you did check the minutes for these references requested? A. I checked the minutes for references to I. D. S., and I recall I gave them to Mr. Daly, but I may be wrong.

I will have to check with him afterwards to see what minutes I have given him, and then recheck the minute book.

Q. Will you produce for this court these minutes which were referred to in the question of March 29th? A. Yes; I would be glad to produce all of those.

Mr. Daly: If they have not already been produced.

The Witness: I think Mr. Daly may have them.

[fol. 1954] Mr. Daly: Anything I have has been put in evidence. There may be others that I have not seen.

The Witness: That may be it. I do not know.

Mr. Daly: I do not have any minutes that have not been put in evidence.

[1943] *By Mr. Graubard:*

Q. Will you make a list, Mr. Wallace, of every minute of the board of directors and of the executive committee of the board of directors of Alleghany Corporation, which contains a reference to the business or finances of the stock of I. D. S. for the years commencing 1949 to date? A. Yes, sir.

Q. Will you endeavor to have that available either tomorrow or next week? A. I will endeavor to have it as soon as I can, Mr. Graubard.

Q. Page 92, line 5:

"Q. Would there be, for instance, in this budget, also a forecast of mortgage operations and their results? A. There very likely would.

"Q. I would ask you to have a check made for the existence of any such budgets or forecasts [1944] or projections of earnings, in any form whatever, in the form of a memorandum or in the form of a financial statement, or a report, and I would surely appreciate your furnishing those. A. Gladly.

"Q. I am referring most particularly to those covering the years 1949, 1950, 1953, 1954. A. Surely.

[fol. 1955] "Mr. Daly: With reference to I. D. S., of course.

"Mr. Haudek: Always I. D. S.

"Mr. Daly: If they are available, we will produce them.

"By Mr. Haudek:

"Q. My request will include any kind of forecast, both as to the nature of earnings from mortgage operations, as well as any other aspects of the business of I. D. S. A. Naturally."

Was any search made for such documents, Mr. Wallace? A. There are no such documents in Alleghany Corporation's files, unless we find these various reports that we are looking for.

I would be greatly surprised if such records that [1945] would be made at the time the company was buying I. D. S. did not contain some forecasts.

Q. But you do not have them—— A. Not here now. I will try to have those as soon as we get the Stiver report and Shipman report together. I think that is probably going to be your answer.

Q. Did you supply anything to Mr. Pomerantz or Mr. Haudek, in regard to this? A. No.

Mr. Bijur: Off the record.
The Referee: Off the record.

(Discussion off the record.)

[fol. 1956] The Referee: When you asked a question of the witness as to whether or not he supplied any of these records to Mr. Pomerantz, you meant prior to the meeting of April 18, 1955?

Mr. Graubard: I mean at any time, sir.
The Referee: At any time?
Mr. Graubard: Yes.
The Referee: All right; he has answered that.
The Witness: Mr. Pomerantz's firm of course has examined the same file that you people did. I [1946] don't remember. Maybe I was remiss in not producing that soon enough. Mr. Bijur has correctly refreshed my recollection.

By Mr. Graubard:

Q. You mean all the files that you have made available to counsel for the objectants were previously made available to Mr. Pomerantz? A. No, sir.

Q. What do you mean, Mr. Wallace? A. I told them that they could have the opportunity to examine those files when you were done, if they wanted to.

Q. Do you know if they actually did examine these files? A. You would have to ask them. I do not know myself.

The Referee: (To Witness) That is enough. You do not know yourself.
Go ahead, Mr. Graubard.

Q. Would they examine such files through you as secretary of the corporation, Mr. Wallace? A. No; I do not think so.

[fol. 1957] Q. How would they go about getting such files [1947] from Alleghany; can you tell us?

Mr. Daly: The same way that you did.

Mr. Graubard: I got them through Mr. Wallace.

The Witness: I don't know how you got them through me. I mean—

Mr. Graubard: Mr. Martin got them from you, with your consent, so he advised me.

You are the secretary of the corporation. I would like to know how one does get records, if not through you.

Mr. Daly: We are quibbling now, Your Honor.

Mr. Graubard: Your Honor, this is very important.

The Referee: Do you have an objection?

Mr. Daly: I have an objection.

The Referee: Sustained.

Ask your next question, Mr. Graubard.

By Mr. Graubard:

Q. Did Mr. Pomerantz or anybody from his firm ask you for the right to look at these files which you have not made available to counsel for the objectants? A. No one requested me. I told Mr. Martin that those files were to be available to anybody after you [1948] people got done; but I said you were to have first crack at them.

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[fol. 1958]

[1963] SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

Bar Association,
42 West 44th Street,
New York, N. Y.

November 17, 1955,
10 a. m.

Before:

HON. ROBERT J. FITZSIMMONS,
Referee.

• • •

[1967] The Referee: Let us proceed.

• • •

[1968] Mr. Graubard: Mr. Martin would like to make a statement first, Your Honor.

The Referee: All right, Mr. Martin.

Mr. Martin: Your Honor please, I would like to have the record show that on Friday, November 11th, Monday, November the 14th, and, again, last night, about 18 files of Alleghany were produced for exami-[fol. 1959] nation by the attorneys here and, also, certain additional papers.

The attorneys who examined the files are Messrs. Graubard, Phillips, Bijur, Kazan, Kahan, Lichtenstein and Herts.

Among the papers examined were the financial statement of Murchison Brothers, dated June 30, 1955; the financial statement of Murchison Brothers, dated December 31, 1954; and the balance sheet of Murchison Brothers as of June 30, 1954.

Mr. Graubard asked me to take out of the files quite a few of the papers for his use here this morning, and I have those papers before me.

Mr. Bijur: If Your Honor please, I believe Mr. Martin has separated a group that was requested and examined by Mr. Kahan and myself alone; and [1969] another group that was examined and requested by Mr. Kahan and myself and Mr. Graubard.

I believe he will mark them as one group.

I believe they come from one file; and I would like to have that identified—that is, the file.

Mr. Haudek: Your Honor, I did not understand that there was to be a stipulation concerning any of these exhibits.

I thought the exhibits would be offered and—

Mr. Bijur: You can leave that off the record. The stipulation relates to other exhibits, Mr. Haudek.

Mr. Haudek: Well, any exhibits—

[fol. 1960] Mr. Bijur: Not with respect to this group.

Mr. Haudek: I would like to reserve my right to object to any exhibit if it is wholly irrelevant to the case.

Mr. Daly: Yes; and I wish to say that I had no stipulation either.

Mr. Martin: All I said was that they asked to have certain papers taken out of the file.

[1970] I took those papers out, and the papers are here for their use this morning.

The Referee: Are those papers to be offered in evidence?

Mr. Martin: We do not know.

Mr. Graubard: Yes, sir.

Mr. Crowley: If they are being offered in a group, Your Honor, I wish to say that I have objections to about seven or eight of those documents which are to be offered, and I would like to be heard with respect to them.

The Referee: We will ask the question first.

Are they to be offered in a group, or individually?

Mr. Graubard: I will offer them individually, sir.

Mr. Bijur: As to those that I am interested in, I agree to that.

The only reason I mentioned a group was because I believe they come from a particular folder and I wanted that folder identified with reference to that [fol. 1961] group of exhibits, even though they may be marked separately.

[1971] The Referee: We have your position on the record, Mr. Bijur.

Mr. Bijur: Thank you, your Honor.

• • • •

Mr. Martin: I should like to point out that those 18 files are still here and available for examination.

The Referee: All right.

Mr. Graubard: From the file designated "'I. D. S. A' Agreement Letters, Correspondence, Data, covering stock purchases, et cetera, First National Bank of Minneapolis, excerpts from minutes, [1972] et cetera" offered by me on behalf of Mr. Bijur and Mr. Kahan.

I offer first a copy of a letter dated April 25, 1949, directed to Mr. Gamble from Alleghany Corporation, consisting of three pages.

Mr. Haudek: May I have a very quick look at it?

The Referee: Yes; you may.

(Whereupon, Mr. Graubard handed a document to Mr. Haudek.)

Mr. Haudek: No objection.

Mr. Graubard: Mr. Bijur requests that we further identify this letter by noting that it is signed by Mr. W. R. Purcell, vice president.

[fol. 1962] Mr. Bijur: For Alleghany.

The Referee: It will be received in evidence and marked Objectants' Exhibit 319.

(Copy of letter above referred to, submitted by Mr. Graubard, dated April 25, 1949, addressed to

Mr. B. C. Gamble, 15 North 8th Street, Minneapolis 3, Minnesota, consisting of three pages, signed by R. W. Purcell as vice president of Alleghany Corporation, was received in evidence [1973] and marked Objectants' Exhibit 319, as of this date.)

The Referee: Off the record.

(Discussion off the record.)

Mr. Graubard: From the same file, and on behalf of Mr. Bijur and Mr. Kahan, I offer in evidence a copy of a two-page letter, dated June 16, 1949, directed to Mr. H. K. Bradford, and unsigned, although it contains Mr. Purcell's typed name on the lower left hand corner of the second page.

The Referee: It will be received in evidence and marked Objectants' Exhibit 320.

(Copy of letter above referred to, submitted by Mr. Graubard, dated June 16, 1949, addressed to Mr. H. K. Bradford, Investors Diversified Services, Inc., Roanoke Building, Minneapolis 2, Minnesota, consisting of two pages, and containing, in the lower [fol. 1963] left hand corner of the second page, the notation, "R W Purcell: Mr," was received in evidence and marked Objectants' Exhibit 320, as of this date.)

M. Graubard: On behalf of Messrs. Bijur, [1974] Kahan and myself, I offer from the I. D. S. file marked "Y—Young Robert R—Miscellaneous," the following documents:

A single page copy of a letter dated January 11, 1949, from A. J. Stiver to Mr. Robert R. Young, with a copy to Charles Shipman, New York, noted.

The Referee: It will be received in evidence and marked Objectants' Exhibit 321.

(Copy of letter above referred to, submitted by Mr. Graubard, dated January 11, 1949, addressed

to Mr. Robert R. Young, the Towers, North County Road, Palm Beach, Florida, signed, in blank, "A. J. Stiver," and containing, in the lower left hand corner, the notation, "Enc. CC-Mr. Charles Shipman, New York, New York," was received in evidence and marked Objectants' Exhibit 321, as of this date.)

Mr. Bijur: May I note on the record at this time that this last exhibit, Objectants' Exhibit 321, is the letter which refers to the so-called Stiver report to Mr. Young, which was mentioned yesterday, and which Mr. Wallace is [1975] endeavoring to obtain, I believe, from Mr. Purcell.

[fol. 1964] Of course we want that.

Mr. Wallace: From I. D. S.

Mr. Bijur: I stand corrected.

Mr. Wallace is endeavoring to obtain it from I. D. S.

Mr. Graubard: Until noted to the contrary, this document and all the other ones which I will offer in evidence, come from the same file noted above.

I offer in evidence at this time a memorandum copy, dated February 18, 1949, to Mr. Robert R. Young from Charles Shipman re Investors Syndicate.

It bears a notation that a copy went to Mr. Purcell.

The Referee: It will be received in evidence and marked Objectants' Exhibit 322.

(Copy of memorandum above referred to, submitted by Mr. Graubard, entitled "To Mr. Robert R. Young—Date February 18, 1949—from Charles Shipman—Re: Investors Syndicate," consisting of two pages, and containing, in the lower left hand corner of page 2, the notation, "CC: Mr. R. W. Purcell," was [1976] received in evidence and marked Objectants' Exhibit 322, as of this date.)

Mr. Graubard: I offer in evidence a carbon copy of a letter dated April 29, 1949, from Galen Van Meter to Mr. Robert R. Young, with a copy to Mr. Purcell

[fol. 1965] noted in the left hand corner of the page, at the bottom.

The Referee: It will be received in evidence and marked Objectants' Exhibit 323.

(Copy of letter above referred to, submitted by Mr. Graubard, dated April 29, 1949, addressed to Mr. Robert R. Young, Chrysler Building, 405 Lexington Avenue, New York, New York, signed, in blank, "Galen Van Meter," and containing, in the lower left hand corner, "Copy to Mr. R. W. Purcell," was received in evidence and marked Objectants' Exhibit 323, as of this date.)

Mr. Graubard: I offer in evidence a one-page carbon copy of a letter dated January 20, 1950, addressed to Mr. Robert R. Young, from the secretary to Mr. Purcell.

The Referee: It will be received in evidence and marked Objectants' Exhibit 324.

[1977] (Copy of letter above referred to, submitted by Mr. Graubard, dated January 20, 1950, addressed to Mr. Robert R. Young, the Towers, North County Road, Palm Beach, Florida, and containing the notation, "Yours, secretary to Mr. Purcell," with the name M. Stivers typewritten in the lower left hand corner, was received in evidence and marked Objectants' Exhibit 324, as of this date.)

[fol. 1966] Mr. Graubard: I offer in evidence a one-page letter dated January 20, 1950, directed to Mr. Robert R. Young, being a carbon copy, unsigned, but with the initials, "RWP:MS" in the lower left hand corner; together with an enclosed copy of a letter, consisting of five pages, dated January 14, 1950, to Mr. R. W. Purcell, from E. E. Crabb.

I offer both of these documents in evidence as one exhibit.

Mr. Haudek: I object to this document.

These are recommendations for salary increases for various officials of Investors Diversified Services.

I do not see the remotest relevancy.

The Referee: What do you have to say as to [1978] that, Mr. Graubard?

Mr. Graubard: I could ask for the usual ruling, Your Honor, but I would be very happy to state exactly why I am putting this in.

This is one of the documents which shows the very close control that Mr. Young had over I. D. S. during the period when this exchange was being formulated, and, therefore, shows that Mr. Young knew precisely what was going on in I. D. S., with full knowledge of the value of the stock.

The Referee: Mark it subject to a motion by counsel at the end of the case to strike it out.

Mr. Daly: I join in the objection.

The Referee: Same ruling.

[fol. 1967] It will be received in evidence and marked Objectants' Exhibit 325.

(Documents above referred to, submitted by Mr. Graubard, consisting of copy of a letter dated January 20, 1950, addressed to Mr. Robert R. Young, the Towers, North County Road, Palm Beach, Florida, being unsigned, and containing, in the lower left [1979] hand corner, the notation, "RWP:MS"; together with copy of letter entitled "Investors Diversified Services, Inc., Minneapolis," dated January 14, 1950, addressed to Mr. R. W. Purcell, 3600 Terminal Tower, Cleveland, Ohio, consisting of five pages, signed, in blank, "E. E. Crabb," were received in evidence and marked Objectants' Exhibit 325, as of this date.)

Mr. Graubard: I offer in evidence a carbon copy of a letter dated January 27, 1950, addressed to Mr. Robert R. Young from the secretary to Mr. Purcell.

The Referee: It will be received in evidence and marked Objectants' Exhibit 326.

(Copy of letter above referred to, submitted by Mr. Graubard, dated January 27, 1950, addressed to

Mr. Robert R. Young, the Towers, North County Road, Palm Beach, Florida, and containing the notation at the end of the letter "Sincerely yours, secretary to Mr. Purcell," and containing, in the [fol. 1968] lower left hand corner, the typewritten notation "M. Stivers," was received in evidence and marked Objectants' Exhibit 326, as of this date.)

[1980] Mr. Graubard: I offer in evidence carbon copy of a letter dated February 11, 1950, consisting of four pages, addressed to Mr. Robert R. Young and Mr. Allan P. Kirby, which letter is unsigned, but containing in the lower left hand corner the notation, "RWPurcell."

I note that to the face of this carbon copy there is affixed a memorandum in ink, addressed to "Bob," signed, "Marty," dated April 27, 1950, and that such slip bears the notation "From the desk of—M. D. Avent."

That is offered as one exhibit.

The Referee: They will be received in evidence and marked Objectants' Exhibit 327.

(Copy of letter above referred to, submitted by Mr. Graubard, dated February 11, 1950, addressed to Mr. Robert R. Young, 4500 Chrysler Building, New York 17, N. Y., and Mr. Allan P. Kirby, Millbank, Camden, South Carolina, consisting of four pages, said letter being unsigned, and containing, in the lower left hand corner, the typewritten notation, "RWPurcell"; together with memo attached, dated [fol. 1969] 4-27-50, addressed to "Bob," and signed "Marty," [1981] and containing, in the upper left hand corner, the notation, "From the desk of—M. D. Avent," were received in evidence and marked Objectants' Exhibit 327, as of this date.)

Mr. Graubard: I offer in evidence carbon copy of letter dated May 8, 1950, addressed to Mr. Young, bearing the initials in the lower hand corner "RWP," being a one-page letter.

The Referee: It will be received in evidence and marked Objectants' Exhibit 328.

(Copy of letter above referred to, submitted by Mr. Graubard, dated May 8, 1950, addressed to Mr. Young, unsigned, and containing, in the lower left hand corner, the initials "RWP/r," was received in evidence and marked Objectants' Exhibit 328, as of this date.)

Mr. Graubard: The documents that will be hereafter offered are proffered by myself alone.

The following documents have been extracted from file entitled "'S'—Stocks, Third Stock Offer—Invitation for Tenders of Preferred Stocks, December 27, 1949, Documents, Correspondence, etcetera, P. K. T. No. 1."

[1982] I offer in evidence a one-page letter, on the letterhead of the Chesapeake & Ohio Railway Company, dated December 13, 1949.

[fol. 1970] It is stated to be a memo to Mr. Robert W. Purcell from Mr. Young.

Mr. Haudek: I object to the document on the ground that it is utterly irrelevant to this case. It has nothing to do with any of the transactions involved in this litigation.

Mr. Daly: I join in that objection.

The Referee: Mark it, Mr. Reporter.

My ruling will be the same as before. You will have the right to object to it later on and move to strike, at the end of the entire case.

(Letter above referred to, on the letterhead of the Chesapeake & Ohio Railway Company, dated New York—December 13, 1949, containing the notation, "Memorandum to: Mr. Robert W. Purcell," signed, in blank, "Robert R. Young," and containing, in the lower left hand corner, the typewritten notation "CC: Mr. Glover Johnson—Mr. Charles Shipman," was received in evidence and marked Objectants' Exhibit 329, as of this date.)

[1983] Mr. Haudek: Off the record, please.

The Referee: Off the record.

(Discussion off the record.)

The Referee: I will sustain your objection on that.

[fol. 1971] Mr. Graubard: Doesn't Your Honor want to hear me on that?

The Referee: I will hear you.

Mr. Graubard: This document, together with a lot of other documents which bear on the exchange offer made by Alleghany Corporation to all its stockholders, was treated, we intend to show the court, quite differently from the exchange offer made at approximately the same time, which was limited to the officers of Alleghany Corporation for the I. D. S. transaction alone.

Now, you will not find, sir, documentation of the desirability or undesirability of this exchange offer in regard to the I. D. S. transaction, and we intend to pursue that to show how the officers and directors of Alleghany Corporation dealt one way with themselves and in an entirely different way with the stockholders.

[1984] The Referee: How many other exhibits do you have that tie in with that last one that I looked at?

Mr. Graubard: Just a few, Your Honor.

Now, the one that follows, for example, shows the cost of getting in Alleghany shares on tender, and shows that when you have an invitation for tenders the cost tabulated works out to 16 cents per shares—

The Referee: All right, I will go along with my original ruling.

[fol. 1972] I will reverse myself and go along with my original ruling, subject to a motion by counsel to strike out at the end of the entire case.

Mr. Graubard: If you prefer, I will state why I am offering each and every document into evidence.

Mr. Crowley: On these documents, I would like to be heard specially before they go in.

The Referee: If you want to be heard, I will listen to you now.

Mr. Crowley: I would rather wait until he comes to them.

[1985] Mr. Haudek: Wouldn't it be better for them to go in in bulk?

The Referee: It seems that some counsel want them to go in in bulk, and other counsel do not want them to go in in bulk.

Mr. Haudek: Off the record, please.

The Referee: Off the record.

(Discussion off the record.)

Mr. Haudek: May I have, therefore, Your Honor, a running objection, always subject to a motion to strike at the end of the case.

The Referee: All right, you may have that.

Mr. Daly: May I have that same running objection, Your Honor?

The Referee: You may.

[fol. 1973] Mr. Graubard: I offer in evidence a copy of a memorandum dated February 3, 1950, to Messrs. Young, Kirby and Purcell, apparently from Charles Shipman, in regard to the cost of getting in Alleghany's shares on tender.

It is a one-page document.

The Referee: It will be received in evidence [1986] and marked Objectants' Exhibit 330.

(Copy of memorandum above referred to, submitted by Mr. Graubard, dated February 3, 1950, addressed to Messrs. Young, Kirby, and Purcell (Copy to Mr. Anzalone), sent by Charles Shipman, and containing the notation, "Cost of Getting in Alleghany Shares on Tender," was received in evidence and marked Objectants' Exhibit 330, as of this date.)

Mr. Graubard: I offer in evidence carbon copy of a one-page memorandum dated February 22, 1950, to

Robert R. Young from Robert W. Purcell, with regard to the exchange of AAY-IDS Shares.

The Referee: It will be received in evidence and marked Objectants' Exhibit 331.

(Copy of memorandum above referred to, dated 2/22/50, to Robert R. Young and Robert W. Purcell, containing the notation, "Exchange of AAY-IDS Shares," was received in evidence and marked Objectants' Exhibit 331, as of this date.)

[fol. 1974] Mr. Graubard: I offer in evidence a three-page carbon-copy of a document bearing, in the upper left hand corner, the initials RWP:MS, and [1987] the date January 24, 1950.

The Referee: It will be received in evidence and marked Objectants' Exhibit 332.

(Carbon copy of document above referred to, submitted by Mr. Graubard, bearing in the upper left hand corner the notation, "RWP:MS No. 2 cc 1/24/50," consisting of three pages, was received in evidence and marked Objectants' Exhibit 332, as of this date.)

Mr. Graubard: The following offers come from the file designated "'S'—Stockholders' Meeting, May 3, 1950, Agenda, Ballots, Proxy Reports, Minutes, Correspondence, etcetera, P.K.T. 1."

I offer in evidence a one-page letter on the letterhead of J. P. Morgan & Co. Incorporated, dated April 19, 1950, to J. J. Anzalone, Esq., vice president, Secretary and Comptroller, Alleghany Corporation, etcetera.

The Referee: It will be received in evidence and marked Objectants' Exhibit 333.

(Letter above referred to, submitted by Mr. Graubard, on the letterhead of J. P. Morgan & Co. [1988] Incorporated, dated New York, April 19, 1950, ad-[fol. 1975] dressed to J. J. Anzalone, Esq., vice president, secretary and comptroller, Alleghany Corpo-

ration, 3600 Terminal Tower, Cleveland 13, Ohio, signed by the assistant secretary of J. P. Morgan & Co. Incorporated, was received in evidence and marked Objectants' Exhibit 333, as of this date.)

Mr. Graubard: I offer as one exhibit a copy of a memorandum to Mr. Robert R. Young, dated March 14, 1950, from J. J. Anzalone, enclosing a draft of Alleghany Corporation, a proxy statement, affixed to which are various riders, and on the face of which are various pencilled comments and corrections.

The Referee: They will be received in evidence and marked Objectants' Exhibit 334.

(Copies of documents above referred to, consisting of a memorandum to Mr. Robert R. Young, dated March 14, 1950, from J. J. Anzalone; a memorandum to Mr. James Draper, dated March 16, 1950, from J. J. Anzalone; together with memorandum to Mr. Allan P. Kirby, dated March 14, 1950, by J. J. Anzalone; together with copy of document entitled "Proxy [1989] Statement—Alleghany Corporation—Annual Meeting of Stockholders May 3, 1950, consisting of 16 pages, said exhibit containing 19 pages [fol. 1976] in all, were received in evidence and marked Objectants' Exhibit 334, as of this date.)

The Referee: Off the record.

(Discussion off the record.)

The Referee: Let us proceed, gentlemen.

Mr. Graubard: I offer in evidence a one-page carbon copy of a memorandum or letter, as the case may be, dated February 10, 1950, to Mr. Charles Shipman.

I note that in pencil on this page is written, "RWP has other carbon."

I also note that on this page there are, next to the date, the capital letters "WSS."

I will now inquire of Mr. Wallace, or any of the persons representing the proponents, if they know who WSS is?

Mr. Daly: I do not know.

Mr. Graubard: May I ask Mr. Wallace if he will endeavor to identify WSS?

Mr. Wallace: I certainly will.

[1990] The Referee: It will be received in evidence and marked Objectants' Exhibit 335.

(Copy of document above referred to, submitted by Mr. Graubard, dated February 10, 1950, addressed to Mr. Charles Shipman, was received in evidence and marked Objectants' Exhibit 335, as of this date.)

[fol. 1977] Mr. Graubard: I offer in evidence a carbon copy of a letter dated February 16, 1950, to Mr. Harold K. Bradford, vice president, Investors Diversified Services, Inc., from Charles Shipman.

I would like to note that on the bottom of the letter is a notation of "cc Mr. Purcell."

I would like to further note that there is an attached one-page carbon copy to this letter, and that also attached to it is a memorandum slip of paper on which is contained in ink a note to Mr. Purcell apparently from Charles Shipman.

I ask that all of these papers be marked as one exhibit.

The Referee: They will be received in evidence and marked Objectants' Exhibit 336.

[1991] (Copy of letter above referred to, dated February 16, 1950, addressed to Mr. Harold K. Bradford, vice president, Investors Diversified Services, Inc., Roanoke Building, Minneapolis, Minnesota, signed in blank, "Charles Shipman," and containing, in the lower left hand corner, the notation, "cc Mr. Purcell"; together with carbon copy of page attached, with the number 7 at the top; together with memorandum slip of paper entitled "Memorandum from Charles Shipman," and containing, in ink, the following notation: "Mr. Purcell:

for your information. CS—2/16/50," were received in evidence and marked Objectants' Exhibit 336, as of this date.)

[fol. 1978] Mr. Graubard: I offer in evidence a letter dated March 29, 1950, from the Securities and Exchange Commission to Mr. J. J. Anzalone, vice president, Alleghany Corporation, by Byron D. Woodside, assistant director, Division of Corporation Finance, consisting of three pages.

The Referee: It will be received in evidence and marked Objectants' Exhibit 337.

(Letter above referred to, submitted by Mr. [1992] Graubard, on the letterhead of Securities and Exchange Commission, Washington, dated March 29, 1950, addressed to Mr. J. J. Anzalone, vice president Alleghany Corporation, 3600 Terminal Tower, Cleveland 13, Ohio, re: Alleghany Corporation—File No. 11-999, consisting of three pages, signed by Byron D. Woodside as assistant director, Division of Corporation Finance, was received in evidence and marked Objectants' Exhibit 337, as of this date.)

Mr. Graubard: I offer in evidence carbon copy of a letter dated March 30, 1950, to the Securities and Exchange Commission from Alleghany Corporation by J. J. Anzalone, vice president, consisting of two pages.

The Referee: It will be received in evidence and marked Objectants' Exhibit 338.

[fol. 1979] (Copy of letter above referred to, submitted by Mr. Graubard, dated March 30, 1950, addressed to the Securities and Exchange Commission, 425-2nd Street, N. W., Washington 23, D. C. re: Alleghany Corporation—File No. 11-999, consisting of two pages, signed, in blank, "Alleghany Corporation [1993] by vice president," and containing, in the lower left hand corner, the notation, "J. J. Anza-

lone," was received in evidence and marked Objectants' Exhibit 338, as of this date.)

Mr. Graubard: I will now offer from the file entitled "Minutes—Stockholders' Meeting—May 3, 1950," a carbon copy of a transcript of the minutes of the annual meeting of stockholders held in Baltimore, Maryland, May 3, 1950, and consisting of 142 pages.

Mr. Daly: May I ask: why are you offering that, Mr. Graubard?

Mr. Graubard: Certainly, sir.

I would be very happy to save your time, Mr. Daly, in reviewing that.

You will note, Mr. Daly, at the following pages, pages 36, 38, 52 following, 60 following, a description of some of the alleged causative factors leading to the exchange of I. D. S. with the officers; and I think that a perusal of those minutes will indicate why I want to offer them in evidence.

• • •

[fol. 1980] [1996] Mr. Graubard: Your Honor, when we took our usual luncheon recess we had just offered in evidence the minutes of the Alleghany Corporation, held in Maryland on May 3, 1950, and I was asked by Mr. Daly as to whether I would not specify the pages in which I was particularly interested.

I am prepared to do that, sir, and for the [1997] record, I want to call attention to pages 36 to 38, 52 to 61, and page 129.

I offer these minutes, as noted, in evidence.

Mr. Daly: It being understood that only those pages noted are to be deemed in evidence.

The Referee: So ordered.

Mr. Graubard: Together with such additional data as would be required, such as the introduction, to show the proper call of the meeting, so that there will be no question about when and where and by whom the statements were made.

Mr. Daly: I am not of course conceding the relevancy of any of it.

The Referee: Mark it Objectants' Exhibit 339 in evidence, Mr. Reporter.

(Pages 36 to 38, 52 to 61, and page 129 of the minutes of annual meeting of stockholders of Alleghany Corporation held in Baltimore, Maryland, on May 3, 1950, submitted by Mr. Graubard, were received in evidence and marked Objectants' Exhibit 339, as of this date.)

[fol. 1981] Mr. Graubard: I now turn to the file entitled [1998] "I. D. S. Sale—1954,"

* * *

[2014] Mr. Graubard: The next two exhibits are taken from the I. D. S. file entitled, "'Y'—Young, Robert Young, Miscellaneous"; and they are in addition to the other exhibits previously put into evidence from such file.

I offer in evidence copy of a letter dated May 7, 1951, to Mr. Robert R. Young, consisting of two pages, unsigned but bearing the initials in the lower left hand corner of page 2, "rwp."

Mr. Daly: Will you tell me what the relevancy [2015] and materiality of that letter is, Mr. Graubard?

Mr. Graubard: The second paragraph of this letter refers to the establishment of reserves in 1949, and contains other data, all of which bear upon what objectants believe already to be in the record, in part, to wit, that reserves were set up for I. D. S. in 1949 in order to indicate that the revenue, net income, of I. D. S., for that year, was less than it should have been, based upon standard calculations of revenue for I. D. S.

We feel that it is pertinent for this reason.

Mr. Daly: I object to it, Your Honor.

The transaction complained of was terminated by vote of the stockholders on May 3, 1950.

[fol. 1982] They are now trying to offer, in connection with that transaction—which was all over and done with—a letter dated May 7, 1951, which is more than a whole year later.

Mr. Graubard: I am ready, Your Honor, to take an admission from the people who participated in that transaction whether that admission was made in 1949 or in 1955.

* * *

[2017] The Referee: Your only interest is in the second paragraph here, Mr. Graubard, is that right?

Mr. Graubard: There is a reference here in the first paragraph as well, Your Honor.

The Referee: You are not interested in the rest of the letter?

Mr. Graubard: The second paragraph, together with the introduction in the first one.

The Referee: Is Mr. Haudek correct in his statement that the financial reports for these various years, including 1949, 1950, and 1951, reflect the reserves that were set up, which subject is taken up in this letter?

Mr. Graubard: I think they are fair in that they reflect the reserves as the proponents of this settlement would like to have them appear to be set up.

[fol. 1983] In other words, Your Honor, what occurred here—

The Referee: Is there a difference between the reserves shown in the financial reports for the years that you are referring to here, and what is set up here in this letter?

[2018] Mr. Graubard: If Your Honor will hear me, I will make it clear.

The Referee: All right.

Mr. Graubard: What occurred here was that in order to reduce the net income for I. D. S. for 1949 and put this forward in the statement of the stockholders, they changed the accounting method and they took, as is indicated by one exhibit already put in evidence to-

day—at one time they took, as I recall, $1,150,000 out of income and put it into reserve, as Mr. Purcell says, arbitrarily, and that will show a reduction of income for 1949.

The exhibit presently before Your Honor is one which is addressed to the same kind of accounting method used by them.

Mr. Haudek: Your Honor, all these things are amply reflected in the annual and semi-annual reports of I. D. S. They all say that their accounting method was changed; they all say that it was done pursuant to the requirements of the Securities and Exchange Commission.

These facts are fully in the financial state- [2019] ments.

[fol. 1984] The Referee: Therefore, this is harmless.

Mr. Haudek: It is harmless, except—

The Referee: That it burdens the record.

Mr. Haudek: Yes, except that it burdens the record, Your Honor.

The Referee: I will mark it in evidence.

It will make Mr. Graubard happy.

Mr. Reporter, mark it Objectants' Exhibit 354 in evidence.

Mr. Daly: Unfortunately, Your Honor, this is not going to be the only letter.

The Referee: No; but I will throw a lot of this stuff out. There is a lot of surplusage here.

All right, mark it.

• • • •

[2022] Mr. Graubard: Your Honor, there are a large number of documents in this file, and, in the interests of keeping the record down to a minimum, I would like to state why I want to offer these letters and documents, in order to determine whether or not there is not some means available to the court of obtaining a stipulation or concession which would eliminate most of these exhibits.

The Referee: All right, I will hear you on that, Mr. Graubard.

Mr. Graubard: Commencing with July, 1949, and running through the next succeeding years, there is a volume of correspondence between Mr. Crabb, Mr. [fol. 1985] Purcell, and Mr. Young, which goes into the most intimate details of management on matters of financial policy, administration, legal policy, investment policy, and so forth, of I. D. S.

Mr. Crabb at that time was the president of Investors Diversified Services.

The Referee: Mr. Purcell was the secretary—

Mr. Graubard: Mr. Purcell was vice president of Alleghany Corporation and, also—apparently from this file, as well as other files—was the [2023] representative of Alleghany Corporation in handling directly the affairs of I. D. S.

• • •

[2025] Mr. Graubard: Your Honor, at this time I offer, as one collective exhibit, 91 documents, taken from the file of Alleghany Corporation, which file is entitled, "I. D. S.—Crabb, R. E. president—Miscellaneous correspondence—P. K. T. 1A."

• • •

[2026] Mr. Graubard: I wish to note at this time that I have extracted from this file three documents which I will offer as separate exhibits, these three documents not being included in the comprehensive exhibit.

The Referee: They will be received in evidence and marked Objectants' Exhibits 356-A, B, C, etcetera.

[fol. 1986] (File of exhibits above referred to submitted by Mr. Graubard, were received in evidence and marked as Objectants' Exhibits as follows:)

(Large manila envelope, entitled, "File of Alleghany Corporation entitled I. D. S.—Crabb, E. E.

president—Miscellaneous correspondence—P. K. T. 1A," was marked Exhibit 356-A.)

(Copy of letter dated May 5, 1949, addressed to Mr. E. E. Crabb, signed, in blank, "Secretary to Mr. Purcell," and containing, in the lower left hand corner, "M. Stivers," was marked Exhibit 356-B.)

(Copy of letter dated May 10, 1949, addressed to Mr. E. E. Crabb, containing, in the lower left hand corner, the notation, "R. W. Purcell," was [2027] marked Exhibit 256-C.)

(Copy of letter dated May 23, 1949, addressed to Mr. E. E. Crabb, signed, in blank, "Secretary to Mr. Purcell," and containing, in the lower left hand corner, the notation, "M. Stivers," was marked Exhibit 356-D.)

(Letter on the letterhead of Investors Syndicate, Minneapolis, dated June 9, 1949, addressed to Miss Margaret Stivers, signed by the secretary to Mr. Crabb, and containing, in the lower left hand corner, the notation, "E. Rupprecht," was marked Exhibit 356-E.)

[fol. 1987] (Copy of letter dated June 11, 1949, addressed to Mr. E. E. Crabb, signed, in blank, "Secretary to Mr. Purcell," and containing, in the lower left hand corner, the notation, F. S. Reiner," together with telegram attached, dated June 10, 1949, from Earl E. Crabb to Robert W. Purcell, were marked Exhibit 356-F.)

(Copy of letter dated June 17, 1949, addressed to Miss Ednamae Rupprecht, signed, in blank, "Secretary to Mr. Purcell," and containing, in the lower left hand corner, the notation, "M. Stivers," was marked Exhibit 356-G.)

* * *

[2043] (Document on the stationery of Investors Diversified Services, Inc., Minneapolis, dated July 10, 1950, entitled, Memorandum to: Board of Directors, I. D. S.—CC: H. K. Bradford, C. J. Moore, W. I. Norton, consisting of two pages, signed, "Earl C.," and containing underneath the typewritten signature "E. E. Crabb," was marked Exhibit 356-OOO.)

(Letter dated July 11, 1950, addressed to Miss M. Stivers, signed, "Arthur J. Baker," was marked Exhibit 356-PPP.)

(Copy of letter dated July 22, 1950, addressed to Mr. Earl E. Crabb, president, Investors Diversified Services, Inc., signed, R. Y." and containing [fol. 1988]. in the lower left hand corner the typewritten notation, "CC: Mr. Robert W. Purcell," was marked Exhibit 356-QQQ.)

(Copy of document dated July 21, 1950, entitled, "Memorandum to: E. E. Crabb—Subject: Estimated Cash Receipts and Disbursements for Third Quarter," consisting of two pages, signed [2044] in blank, "J. D. Racey" was marked Exhibit 356-RRR.)

(Copy of letter dated August 3, 1950, addressed to Mrs. Ednamae Ruprecht, Investors Diversified Services, Inc., unsigned; together wtih copy of letter dated August 2, 1950, addressed to Mr. Ed Bang, the Cleveland News, Cleveland, Ohio, unsigned, containing in the lower left hand corner the typewritten notation, "rwp;ms," was marked Exhibit 356-SSS.)

(Document on the stationery of Investors Diversified Services, Inc., Minneapolis, dated August 10, 1950, entitled, "To Directors, Investors Diversified Services, Inc., consisting of two pages, signed, "E.E.C." and containing underneath the typewritten signature, "E. E. Crabb;" together with two-page document attached entitled, "Investors Diversified Services, Inc., and Investors Syndicate of America,

[fol. 1989] —A Comparison of the Actual Cash Receipt and Disbursement Transactions to the Estimated Cash Receipts and Disbursements from January 1, 1950 through July 31, 1950," were marked Exhibit 356-TTT.)

• • •

[2048] (Copy of letter dated March 5, 1951, addressed to Mr. E. E. Crabb, president, Investors Diversified Services, Inc., signed, "R. P. Y." and containing, in the lower left hand corner, the typewritten notation, "IRY:FMC—cc: Mr. R. W. Purcell, Mr. Galen Van Meter, Mr. Harry Thompson, was marked Exhibit 356-GGGG.)

(Letter on the letterhead of Investors Diversified Services, Inc., Minneapolis, dated March 5, 1951, entitled, "Memo to: Mr. Purcell, Mr. Van Meter, Mr. Clark," consisting of two pages, signed, "E. E. C." and containing, underneath, the typewritten signature, "E. E. Crabb," was marked Exhibit 356-HHHH.)

• • •

[2051] (Copy of letter dated May 28, 1951, addressed to Mr. E. E. Crabb, Investors Diversified Services, Inc., signed, in blank, "Martin D. Avent—Special Ass't. to Mr. Purcell," was marked Exhibit 356-PPPP.)

[fol. 1990] (Letter on the stationery of Robert W. Purcell, 4500 Chrysler Building, New York 17, New York, dated January 30, 1952, addressed to Mr. J. J. Anzalone, signed, "Bob," was marked Exhibit 356-QQQQ.)

(Copy of letter dated July 17, 1952, addressed to Mr. Earl E. Crabb, president, Investors Diversified Services, Inc. signed, in blank, "Alleghany Corporation by vice president," and containing, in the lower left hand corner, the typewritten notation, "J. J. Anzalone," was marked Exhibit 356-RRRR.)

The Referee: Off the record, please.

(Discussion off the record.)

Mr. Graubard: I offer in evidence a carbon of a memorandum dated February 8, 1950, from E. E. Crabb to N. B. Waag, noting that it [2052] says, "CC," among others, to Mr. R. W. Purcell.

The Referee: It will be received in evidence and marked Objectant's Exhibit 357.

(Document above referred to, on the letterhead of Investors Diversified Services, Inc., Minneapolis, Minnesota, dated February 8, 1950, entitled, "Memorandum—to: N. B. Waag—CC H. K. Bradford, C. J. Moore, R. W. Purcell," signed, E. E. C. and contain-[fol. 1991] ing underneath the typewritten signature, "E. E. Crabb," was received in evidence and marked Objectants' Exhibit 357, as of this date.)

Mr. Graubard: I offer in evidence letter dated May 12, 1950, from Earl E. Crabb to R. W. Purcell.

Mr. Daly: What is the date of that, Mr. Graubard?

Mr. Graubard: May 12, 1950.

Would you like to see it?

Mr. Daly: Yes.

Mr. Graubard: I might add that this also refers to calculations for the determination of the 1949 net income.

[2053] (Whereupon, Mr. Graubard handed the document to Mr. Daly.)

Mr. Daly: I make the same objection to this letter as I previously made, that it is after the consummation of the transaction complained of.

The Referee: Same ruling.

Mark it, Mr. Reporter, Objectants' Exhibit 358 in evidence.

(Letter on the letterhead of Investors Diversified Services, Inc., Minneapolis, dated May 12, 1950, addressed to Mr. R. W. Purcell, signed, "Earl," and containing the typewritten signature underneath,

"Earl E. Crabb," which exhibit was submitted by Mr. Graubard, was received in evidence and marked [fol. 1992] Objectants' Exhibit 358, as of this date.)

Mr. Graubard: I offer in evidence as one exhibit three pages described as follows:

A, carbon copy of a memorandum to Mr. E. E. Crabb from N. B. Waag, dated June 22, 1955;

B, a letter from E. E. Crabb to Robert W. Purcell dated June 25, 1950; and

C, a copy of a letter dated June 26, 1950, [2054] to E. E. Crabb, without signature, but bearing in the lower left hand corner the initials "R. W. P."

I note that these also relate to the question of reserves for the determination of net income.

Mr. Daly: I make the same objection, Your Honor.

The Referee: Same ruling.

It will be received in evidence and marked Objectants' Exhibit 359.

(Documents above referred to, submitted by Mr. Graubard, being a copy of a letter dated June 26, 1950, addressed to Mr. E. E. Crabb, Investors Diversified Services, Inc., unsigned, containing, in the lower left hand corner, the typewritten initials, "RWP"; together with a letter on the letterhead of Investors Diversified Services, Inc., Minneapolis, [fol. 1993] dated June 23, 1950, addressed to Mr. Robert W. Purcell, signed, "Earl," and containing underneath the typewritten signature, "E. E. Crabb;" together with ribbon copy of document dated June 22, 1950, entitled, "Memo to: E. E. Crabb," signed, in blank, "N. B. Waag," were [2055] received in evidence and marked Objectants' Exhibits 359, as of this date.)

Mr. Graubard: Your Honor, subject to a check of our list of documents against the documents that just went into evidence that concludes our introduction of the documents taken from the files of Alleghany Cor-

poration which were made available to us during these past few days.

There are in addition, Your Honor, certain additional files which we think we will have occasion to request in the course of the further examination of the officers of Alleghany Corporation.

• • •

[fol. 1994]

[2073] SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

Hotel Biltmore,
43rd Street and
Madison Avenue,
New York, N. Y.,
November 21, 1955,
10:30 a. m.

Before:

HON. ROBERT J. FITZSIMMONS,
Referee.

• • •

[2082] DAVID W. WALLACE resumed and testified further as follows:

• • •

[2083] The Witness: Your Honor, in response to the request of Mr. Kahan I have obtained the Stiver report with a covering letter from the firm of Saunders, Stiver & Co., Investment Securities, Member Cleveland Stock Exchange, dated January 11, [2084] [fol. 1995] 1949, addressed to Mr. Robert R. Young, and signed, A. J. Stiver."

Accompanying this letter is a report on Investors Syndicate, Inc., dated January 10, 1949.

The Referee: They will be received in evidence and marked Defendants' Exhibits 363-A and B.

(Documents above referred to, submitted by Mr. Wallace, the first being a 25-page document entitled, "Special Report on Investors Syndicate, Inc.—(Subsidiary and controlled companies)—prepared especially for: Robert R. Young, Esquire, New York City, by Saunders, Stiver & Co.—January 10, 1949"; together with letter attached, on the letterhead of Saunders, Stiver & Co., Investment Securities, Member Cleveland Stock Exchange, dated January 11, 1949, addressed to Mr. Robert R. Young, the Towers, North County Road, Palm Beach, Florida, signed, "A. J. Stiver," were received in evidence and marked Defendants' Exhibits 363-A and B, as of this date.)

* * *

[2088] Alleghany Corporation—May 6, 1949," consisting of two pages, was received in evidence and marked Defendants' Exhibit 364-H, as of this date.)

(Reproduced Copy of document above referred to, submitted by Mr. Daly, entitled, "Resolutions of Executive Committee of Board of Directors of Alle-[fol. 1996] ghany Corporation—April 11, 1949," was received in evidence and marked Defendants' Exhibit 364-I, as of this date.)

By Mr. Daly:

Q. Mr. Wallace, have you also, in compliance with Mr. Graubard's request, made copies of resolutions of the executive committee of the board of directors concerning the purchase by Alleghany Corporation in 1949 of the I. D. S. stock? A. Yes, sir.

Q. I show you resolutions of the executive committee of the Corporation for April 4, 1949, April 27, 1949, and April 28, 1949, and ask you if they are true copies of such minutes (handing documents to the witness)? A. (Examining same) Yes, sir; these are.

Mr. Daly: I offer them in evidence, and [2489] suggest that they be marked with one number and letters.

The Referee: They will be received in evidence and marked Defendants' Exhibits 365-A, B, and C.

(Reproduced copy of document above referred to, submitted by Mr. Daly, entitled "Resolutions of Executive Committee of the Board of Directors of Alleghany Corporation—April 28, 1949," was received in evidence and marked Defendants' Exhibit 365-A, as of this date.)

(Reproduced copy of document above referred to, submitted by Mr. Daly, entitled, "Resolutions of [fol. 1997] Executive Committee of Board of Directors of Alleghany Corporation—April 27, 1949," was received in evidence and marked Defendants' Exhibit 365-B, as of this date.)

(Reproduced copy of document above referred to, submitted by Mr. Daly, entitled, "Resolutions of Executive Committee of Board of Directors of Alleghany Corporation—April 4, 1949," was received in evidence and marked Defendants' Exhibit 365-C, as of this date.)

[2091] *By Mr. Daly*:

Q. Mr. Wallace, have you likewise, at Mr. Graubard's request, made excerpts from the minutes of the Board of Directors of Alleghany Corporation and certified such excerpts which have to do with the so-called exchange offers, from the minutes of the board of directors of Alleghany Corporation for April 21, 1949, May 17, 1949, August 16, 1949, September 15, 1949, December 6, 1949; another of December 6, 1949; and a third of December 6, 1949; May 18, 1950, October 17, 1950, May 22, 1952, August 21, 1952, March 25, 1953, and August 18, 1953 (handing documents to the witness)? A. (Examining same) Yes, Mr. Daly, these are true excerpts from the minutes of the various

board of directors' meetings indicated of resolutions relating to either exchange offers to Alleghany Corporation's preferred stockholders or tenders or open market [2092] acquisitions of such stock by Alleghany Corporation.

[fol. 1998] Mr. Daly: I offer them in evidence and suggest that they be marked as one exhibit, with a letter for each individual resolution and certification.

The Referee: They will be received in evidence and marked Defendants' Exhibits 367-A, B, etcetera.

(Certified copy of minutes of Board of Directors of Alleghany Corporation, held on April 21, 1949, above referred to, submitted by Mr. Daly, consisting of two pages, was received in evidence and marked Defendants' Exhibit 367-A, as of this date.)

(Certified copy of minutes of the Board of Directors of Alleghany Corporation, held on May 17, 1949, above referred to, submitted by Mr. Daly, consisting of three pages, was received in evidence and marked Defendants' Exhibit 367-B, as of this date.)

(Certified copy of minutes of the Board of Directors of Alleghany Corporation, held on August 16, 1949, above referred to, submitted by Mr. Daly, consisting of two pages, was received in evidence and marked Defendants' Exhibit 367-C.)

[2095] *By Mr. Daly*:

Q. Have you likewise, Mr. Wallace, excerpted and certified resolutions of the board of directors of Alleghany [fol. 1999] Corporation concerning the purchase of I. D. S. stock by the Corporation? A. Yes, sir.

Q. I show you certified excerpts from the minutes of the Board of Directors of March 2, March 24, and April [2096] 21, 1949, and ask you whether those are true copies of such excerpts (handing documents to the witness)? A. (Examining same). Yes, sir; they are.

Mr. Daly: I offer them in evidence.

The Referee: They will be received in evidence and marked Defendants' Exhibits 368-A, B and C.

• • •

[2103] *By Mr. Graubard:*

Q. Have you since our last hearing, Mr. Wallace, communicated with Mr. Purcell with respect to the production of letters and memoranda which are the subject of this hearing? [2104] A. He is sending them to me. I had hoped to have them sooner than this, but I am fairly certain that we can have them for you tomorrow, available with these other files that were requested.

Mr. Graubard: I might note, Your Honor, that failure to have these documents disarms me from further cross-examination—at least along those lines.

• • •

[fol. 2000]

IN THE UNITED STATES DISTRICT COURT

PLAINTIFFS' EXHIBIT No. 399B

Excerpts From Transcript of Hearings Before Referee in *Zenn* v. *Anzalone*

David W. Wallace

[2190] SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

[SAME TITLE]

Hotel Biltmore,
Madison Avenue and
West 34th Street,
New York, N. Y.,
November 23, 1955,
10:30 a. m.

Before:

HON. ROBERT J. FITZSIMMONS,
Referee.

* * *

[2195] Mr. Graubard: Yesterday, during the day, Alleghany Corporation made available for our inspection certain files, and I would like to have a list of these files read into the record, which were thus opened to us.

May we have Mr. Phillips give that presentation?

The Referee: Yes.

* * *

[2197] Mr. Martin: You have partly correctly identified the files.

[fol. 2001] I might mention that, all told, a total of 28 files have been made available by Alleghany Corporation for the examination, together with certain other documents.

• • •

[2220] Mr. Wallace: Could I interrupt here? We have produced these files that Mr. Purcell sent from his office in Minneapolis, and I will now hand them to Mr. Martin.

[2221] The Referee: That is another matter. Proceed, Mr. Graubard.

(Whereupon, at this point the witness handed a file of documents to Mr. Martin.)

• • •

[fol. 2002]

[2285] SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

Biltmore Hotel,
43rd St., and Madison Avenue,
New York, N. Y.,
November 30, 1955,
10 A. M.

Before:

HON. ROBERT J. FITZSIMMONS,
Referee.

• • •

[2352] Mr. Graubard: May I also note that we would like some arrangements made for access to the files and, also, for photostating of documents, exhibits in the files.

May we have a determination on that at this time, Your Honor?

The Referee: The files are open for your inspection, Mr. Graubard.

[fol. 2003] Mr. Graubard: Will they be available?

The Referee: Certainly all day tomorrow, when we will not have a hearing; I think they should be open all day Saturday to you. I will not ask anybody to work on Sunday.

Mr. Graubard: That is right; I understand.

The Referee: But tomorrow and Saturday [2353] you should be given an opportunity to inspect them, and in the event you want to photostat something, there is no photostating equipment in the hotel, as far as I know.

Is there?

Mr. Graubard: I do not know.

The Referee: You may know that better than I.

Mr. Wallace: There is a photostating firm right in the neighborhood.

Mr. Graubard: If we could have some modus operandi worked out—

The Referee: Mr. Wallace will work that out for you.

Give him access to a room.

Mr. Wallace: I will get a room in the hotel, Your Honor.

The Referee: And you may have photostated any documents that you like, that have been marked in evidence.

Mr. Graubard: Thank you, Your Honor.

* * * *

[fol. 2004]

[2588-A] SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

Hotel Pierre,
61st Street & Madison Avenue,
New York, N. Y.,
10:30 A.M.
December 5, 1955.

Before:

HON. ROBERT J. FITZSIMMONS,
Referee.

• • •

[2608] Q. Are there any records in the company, in the I. D. S. company or in the Alleghany Company, Mr. Young, which would reveal that circumstance? A. They would have to speak for themselves.

Q. I beg your pardon? A. I say that the records would speak for themselves.

Q. The records that are not here, Mr. Young, the records in your company. A. All you need to do is to request them, and we will supply them.

[fol. 2005] Q. If there are such records, Mr. Young, we do request them. A. We will gladly—

Mr. Daly: Now, Mr. Lichtenstein, the files with reference to I. D. S., the Alleghany files with reference to I. D. S., have been available here for the last two or three weeks.

I do not think that you should now put the [2609] burden on us with respect to doing your work.

The Referee: I am not going to compel you to, either.

Mr. Lichtenstein: They are here, may we reserve our right to request—

The Referee: No, no.

You are going to finish now in the next five minutes.

Mr. Daly: They have been available for several weeks, to you and all other counsel.

Mr. Lichtenstein: I have seen—

The Referee: No, let us not have discussion on that.

Ask your next question.

Mr. Lichtenstein: Then that is all, Mr. Referee. Thank you very much, sir.

The Referee: You are quite welcome.

All cross-examination on I. D. S. is completed except as to Mr. Graubard covering certain parts of it, the parts that he desires to cover.

[fol. 2006] Whom did you agree among yourselves would take up the next line of examination?

* * *

[2655] Mr. Graubard: May we have produced, so that they may be available during this examination, the Purcell files and the Young files, which were hitherto made available to us.

[2656] I want to note for the record, Your Honor, that counsel for Mr. Young made available to us Mr. Young's personal files relating to the 1950 I. D. S. transaction, and that we have had the benefit of going through those files.

* * *

[2657] Mr. Graubard: I will accept that, Mr. Daly. But will you also agree with me that my requests went to Mr. Wallace, and it was Mr. Wallace, therefore, who must have told you about the 1950 I. D. S. file request.

Mr. Daly: It was Mr. Wallace who told me of the request for the 1950 information, and that was supplied to you, and you have had it for several days now.

* * *

[2717] Q. I do not know whether you are aware of this, [2718] Mr. Young, but I at least had some difficulty in

finding the files and reports of Alleghany Corporation in [fol. 2007] regard to I. D. S. affairs for the period in question, 1949-1950.

In this connection I would—

Mr. Pomerantz: I ask that counsel's remark be stricken out, unless he wants to testify.

Mr. Daly: I was waiting until the finish of the statement before I would object and move to strike it out.

The Referee: Strike it out.

Mr. Pomerantz: I had no difficulty in getting all relevant documents that we asked for.

The Referee: I am striking it out because it is a statement of an experience of his, which is something we can do without, I think.

Go ahead, Mr. Graubard.

Mr. Graubard: My silence in regard to Mr. Pomerantz's remarks are not to be taken as acquiesence.

By Mr. Graubard:

Q. I show you a carbon copy of a typed letter [2719] of four pages, dated November 13, 1951, Mr. Young, to Mr. Allan P. Kirby, apparently dictated by you, Mr. Young, and ask you whether in fact this was a letter sent by you to Mr. Kirby at that time (handing document to the witness)? A. (Examining same) I think it was.

Mr. Graubard: May we have this letter marked in evidence.

[fol. 2008] The Referee: It will be received in evidence and marked Objectants' Exhibit 389.

(Carbon copy of letter above referred to, submitted by Mr. Graubard, dated November 13, 1951, addressed to Mr. Allan P. Kirby, consisting of four pages and containing, in the lower left hand corner of the second page, the typewritten initials "R. R. Y.: RMC," was received in evidence and marked Objectants' Exhibit 389, as of this date.)

By Mr. Graubard:

Q. I call your attention, Mr. Young, to the fifth paragraph of page 3 of such letter, relating to the destruction of files, and ask you to read it [2720] (handing Objectants' Exhibit 389 in evidence to the witness). A. (Examining same) All right, I have read it.

Q. Mr. Young, did you have a policy in Alleghany Corporation in 1951 against the destruction of files of the Corporation? A. Yes.

Q. What was such policy? A. I gave my officers instructions to never destroy files, because I felt that the first consideration of management was to conduct itself so that it never had anything to destroy; and when I caught an officer destroying files then I did not think that he was an appropriate officer for my company.

Q. Did that policy extend to the removal of files from the Corporation? A. Obviously; of course.

[fol. 2009] Q. Was that policy in effect in Alleghany Corporation in 1949? A. It should have been.

Q. In 1950? A. Yes.

[2721] Q. In 1953? A. It should have been.

Q. Today? A. Yes.

Q. Mr. Purcell actually moved from New York City and went to Minneapolis, in 1953; did he not? A. I think it would be more accurate to say that he left Cleveland for Minneapolis.

Q. I will accept that. A. You see, Alleghany's offices and officers have been ubiquitous, to say the least.

Q. Without reading Plaintiffs' Exhibit 4, the deposition of yourself, sir, taken by Mr. Haudek and Mr. Pomerantz on March 29th and March 30th of this year, do you recall having advised Mr. Haudek that apparently Mr. Purcell had removed the files pertaining to I. D. S. when he went to Minneapolis?

Mr. Pomerantz: I think that the question is improper as to form.

If the question of the witness's prior testimony is involved, the witness ought to be confronted with it; otherwise he might have, unwittingly, distortion.

[2722] Mr. Graubard: Is this Mr. Daly's objection, too?

Mr. Daly: Yes; I will object to that.

By Mr. Graubard:

Q. We may refer to that exhibit later, Mr. Young.

Can you tell the court now whether, to the best of your [fol. 2010] recollection, Mr. Purcell took the I. D. S. files or certain of the I. D. S. files with him when he went to Minneapolis in 1953? A. I suspect he did, because he took a good many of my personal files with him, and I am just getting them back now.

Q. Did you request him to return these files after being sworn in this deposition of March 29th and March 30th? A. I requested Mr. Wallace to get them back.

Q. Do you know whether Mr. Wallace so requested Mr. Purcell to return them? A. I felt sure that he did.

Q. Have you seen the files that we have been shown as being all the files returned by Mr. Purcell?

[2723] The Referee: (To Witness) Do you know what files were shown to Mr. Graubard, at his request?

The Witness: No, sir.

I would like to say this, generally, as to my files: that generally, since any subject in the Corporation is assigned to someone else, it is my policy not to keep files, or to keep as few as possible, just to avoid duplication.

It would be silly for me to keep elaborate reports on all of these railroads and have a half hundred officers under me keeping elaborate reports; so I just, as much as possible, kept the material in my files down to personal matters.

By Mr. Graubard:

Q. I show you, Mr. Young, a folder just handed to me by Mr. Martin, counsel for Alleghany Corporation in this [fol. 2011] hearing, and ask you, from your knowledge of what took place during the period of acquisition of I. D. S. and supervision of I. D. S. by Alleghany following its acquisition, up to the period that Mr. [2724] Purcell left Alleghany Corporation in 1953, whether this could be the sum total of the Alleghany files.

You may examine this if you wish (handing file of documents to the witness.)

Mr. Daly: You mean Mr. Young's personal files?

Mr. Graubard: Whether this is Mr. Purcell's total file with regard to I. D. S.

Mr. Daly: I object to what Mr. Purcell may have. Mr. Young does not always know.

The Referee: I will overrule the objection.

If he knows, he can tell us.

A. (Examining document) I am sure that Mr. Purcell has more files than that, if you include his files in Minneapolis.

[2725] Q. Have your counsel told you that I have requested Mr. Adams, who represents the Murchisons at this hearing, to obtain from I. D. S. certain files bearing upon the 1949-1950 business activities of that company, particularly including monthly reports?

Mr. Adams: Just a minute.

I have not been requested to produce any files of I. D. S. at any time by anybody.

[fol. 2012] The Referee: Objection sustained.

Mr. Graubard: I think that is an error.

If I am in error, however, I would like the record to note that I now make such request of [2726] Mr. Adams.

Mr. Adams: I think in fairness here, Mr. Referee, that I should say that this comes pretty late.

Mr. Graubard: I made this request more than a month ago, and I spoke to Mr. Crowley since, in your absence, Mr. Adams.

As a matter of fact, it is on record at the Bar Association.

Mr. Crowley stated on the record at that time that he could not answer in your absence.

Mr. Adams: I think the only request, if my recollection is correct—I may be wrong—was for some monthly earning statements.

Mr. Graubard: Thank you, Mr. Adams.

Mr. Adams: Not for any files, at any time.

Mr. Graubard: Thank you, sir.

Have you ever endeavored to get those?

Mr. Adams: And, as far as I am concerned, I am told that you have been advised—I think by Mr. Daly; he can correct me if I am wrong—that if there were any such statements that they [2727] would be supplied to you.

I also think that the record should show here that the I. D. S. company is an independent company operated [fol. 2013] by an independent board of directors, in which my clients happen to have a substantial interest.

I would be very happy to cooperate in any way that we can, in this proceeding. It does not entitle my clients merely to produce anything that happens to be requested simply because counsel requests it, either myself or Mr. Graubard or anybody else.

I think that it is proper that that kind of suggestion should be negated on this record.

We do not have the power to press a button and say to I. D. S., "Produce this and produce that."

It is an independent, substantial company in which we happen to have an interest.

We will be glad to cooperate—

Mr. Graubard: And which, as a matter of fact, Mr. Adams has designated as being under the control of the Murchisons, and I think the [2728] kind of co-

operation you are offering us is exactly the kind that President Eisenhower was offered by certain representatives of an Eastern country in Geneva.

When it comes right down to it, the realities show that nothing has been produced.

The Referee: Strike that from the record.

Mr. Adams: I ask that that be stricken from the record.

The Referee: Strike it.

[fol. 2014] Next question, Mr. Graubard.

Mr. Graubard: I would like to know whether these monthly reports are going to be produced, Mr. Referee?

The Referee: He says, "no."

Mr. Graubard: Is that your answer, sir?

Mr. Adams: I am sorry, Mr. Referee.

I said I had understood that Mr. Daly had stated earlier—I think through Mr. Wallace—that whatever reports they could lay their hands on would be produced, if there were any.

That was not, as I understood it, my ob-[2729] ligation.

Now, Mr. Daly can correct me if I am wrong.

The Referee: All right, the record is clear on it.

Mr. Graubard: I do not understand yet whether they are going to be produced.

Mr. Daly: I think I told you that we were looking to see if there were any, and that we were writing I. D. S., Mr. Graubard.

My understanding is that there were no monthly reports as such—but this is subject to confirmation—until quite recently, 1952 or 1953; but I am having a check made, and if we can find any, we will certainly be glad to supply them to you.

Mr. Graubard: Have you been advised, Mr. Daly, by anybody in I. D. S. that there are no monthly reports or monthly compilations at all?

Mr. Daly: No.

[fol. 2015] Mr. Wallace tells me that that is his understanding, that they did not start the monthly reports until later; but Mr. Wallace is not [2730] available today, and I know that that is being looked into.

The Referee: You will check further on it, Mr. Daly, and report—

Mr. Daly: Yes, sir.

Mr. Graubard: Your Honor, I have been asking for these records for six weeks.

The Referee: All right, we are not finished yet. You may get them.

Mr. Graubard: Is that a promise or a threat?

The Referee: I make no promises and I issue no threats.

Mr. Graubard: Despite the presence of former Police Commissioner Adams, the case of the purloined papers is still with us.

Mr. Pomerantz: I ask that that remark be stricken out and counsel admonished.

The Referee: Strike it out.

Mr. Pomerantz: That is cheap.

Mr. Graubard: We know that papers were taken from Alleghany—

The Referee: Now, Mr. Graubard, let us [2731] put an end to this. There will be no more discussion along this line.

You are doing a very nice job on cross-examination, and I suggest that you continue to do so.

[fol. 2016] Mr. Graubard: I would like to ask Mr. Young whether he will directly inquire of Mr. Purcell for the return of all the papers that Mr. Purcell may or may not have taken with him when he left Alleghany Corporation in 1953.

The Referee: He said he has already done that.

Mr. Graubard: He has not, sir; he has not so testified.

He said he has asked Mr. Wallace to do so.

The Referee: (To Witness) if you find that he has

any more papers that are relevant to this line of inquiry, Mr. Graubard would like to have them.

The Witness: Yes, sir. I will get after Mr. Wallace the first thing tomorrow morning.

Mr. Graubard: In the future I will no [2732] longer ask for any further papers, bearing in mind that the burden of proof is on these defendants.

The Referee: That is a very astute observation on your part.

I have been advocating that right along.

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[fol. 2017]

[2767] SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

Hotel Pierre,
61st Street and
5th Ave.,
New York, N. Y.,
December 6, 1955,
10:30 a. m.

Before:

HON. ROBERT J. FITZSIMMONS,
Referee.

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[2833] *By Mr. Graubard:*

Q. Mr. Young, who is Webster R. Robinson? A. I do not know.

Q. Have you ever seen this report entitled, "Investors Diversified Services, Inc., Investment Committee, Economic Assumptions as of March 24, 1949," consisting of 12 pages, and subscribed by Webster R. Robinson of the economic research department (handing document to the witness)?

[fol. 2018] A. (Examining same) I have no recollection of it. The company was not under my control at this time.

Q. This document is out of your personal files, sir. A. It proves nothing vis-a-vis my having seen it.

* * * * *

[2845] *By Mr. Graubard:*

Q. I show you, Mr. Young, a letter dated January 16, 1950, from Mr. Purcell to you, directed to Palm Beach, to which is affixed a carbon copy of a reply to Mr. Purcell, dated January 20th and asked you whether you did in fact receive the letter from Mr. Purcell and sent him the memorandum affixed thereto (handing two documents to the witness)? A. (Examining same) Yes.

Q. Do you know where the four reports mentioned in that letter are? A. I haven't the slightest idea. I would be glad to get copies of them for you.

Q. We have not located them.

Did you receive from Mr. Purcell any statements each month, which he referred to in his last sentence of this letter (handing document to the witness)? [2846] A. (Examining same) I think the correspondence indicates that he sent me certain reports, and I wrote back and told him to please stop sending me these reports, that I do not want them.

Mr. Graubard: May we please have this marked after Mr. Pomerantz looks at it.

[fol. 2019] Mr. Pomerantz: Mr. Graubard, the letter you are offering referred to four certificate companies.

In the interest of keeping the record clear, will you describe what the four certificate companies to which this correspondence pertains means?

Mr. Graubard: I have looked for those records, and not having found them I cannot describe them.

Mr. Pomerantz: I will object to encumbering the record here with a statement as to four certificate companies which, unless you can identify them, are completely meaningless in this proceeding.

I would not want an argument raised that they have some relevancy which does not appear on the face of these documents.

Mr. Graubard: These documents are taken [2847] from Mr. Young's files, and I ask that they be marked in evidence at this time.

The Referee: (To witness) Do you know what the four certificate companies are, Mr. Young, that are mentioned in this letter of January 16, 1950?

The Witness: They would have had no connection with the parent company, sir.

Those are the mutual fund companies, and they probably represented simply their portfolio, so many shares of Allied Chemical, so many shares of du Pont, etcetera, a mass of detail relating to the mutual closed end trusts having not the slightest relevancy to the question here, if I may judge.

[fol. 2020] The Referee: I am going to sustain the objection.

Mr. Graubard: Just a minute, sir.

By Mr. Graubard:

Q. Are these so-called certificate companies, Mr. Young, open end investment trusts? A. Just a minute. I have not read this very [2848] carefully. Let me try to figure out what it was.

Q. Perhaps this will help you, Mr. Young (handing Plaintiffs' Exhibit 38 in evidence to the witness). A. (Examining same) I would rather not say what they did represent, and I would just like to write the company and find out from the company as to just what was sent and submit them into evidence, so that there cannot be any doubt about it.

I am sure that I can do that.

The Referee: (To Witness) Right now you just do not know what they represent?

The Witness: No, sir; I do not know what they were, and my return letter merely said, "Please don't send

them to me anymore. I don't want to be bothered with them."

And those are probably down there in Palm Beach collecting dust right now.

The Referee: Objection sustained.

Mark them for identification, Mr. Reporter, as Objectants' Exhibits.

[fol. 2021] (Two documents above referred to, submitted by Mr. Graubard, the first one being a letter on the [2849] stationery of Robert W. Purcell, dated January 6, 1950, addressed to Mr. Robert R. Young, signed, "R. W. Purcell"; together with document on the stationery of the Chesapeake & Ohio Railway Company, dated Palm Beach, January 20, 1950, addressed to Mr. Robert W. Purcell, were marked Objectants' Exhibits 395-A and B for identification, as of this date.)

* * *

[2853] Mr. Graubard: What were you reading from?

The Referee: (To Witness) What were you reading from?

The Witness: I was reading from a memorandum that the I. D. S. accounting department sent to me.

The Referee: Sent to you?

The Witness: Yes, sir.

Mr. Pomerantz: And which, I might add—

The Referee: Just a minute, Mr. Pomerantz.

(To Witness) Is there a date on that, Mr. Young?

[2854] Q. This is your own document, Mr. Young? A. Yes.

[fol. 2022] Q. This was devised to be of assistance to you? A. Yes, to make me intelligible on these complex questions.

Q. You wrote this yourself? A. I wrote it with the help of I. D. S. officers.

Even this was a little bit over my head.

Q. Do you have with you, Mr. Young, the S. E. C. documents and correspondence? A. I have those documents in my office.

I did not bring them with me on account of their bulk.

Q. Would you be good enough to make them available for our examination? A. I would be pleased to.

Mr. Graubard: Your Honor, we will endeavor to keep them out of the record, but we would like to look at them first.

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[fol. 2023]

[2883] SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

[SAME TITLE]

Hotel Pierre,
61st & Madison,
New York, N. Y.,
December 7, 1955,
10:30 a. m.

Before:

HON. ROBERT J. FITZSIMMONS,
Referee.

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[2890] ROBERT R. YOUNG resumed and testified further as follows:

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[3009] Mr. Graubard: I want you to know, since your statement is on the record, that Mr. Young would be subject to recall if we obtained the balance of the documents that we have requested.

Furthermore, we may ask him to return as our own witness.

The Referee: The Referee cannot prevent you from making the request; but he is of the opinion that the request will be denied.

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[fol. 2024]

[3010] SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

Hotel Pierre,
61st & M'son
Avenue,
New York, N. Y.,
December 8, 1955,
10:30 a. m.

Before:

HON. ROBERT J. FITZSIMMONS,
Referee.

* * *

[3060] Mr. Graubard: I have no objection to its going in, Your Honor.

The Referee: All right.

It will be received in evidence and marked Defendants' Exhibit 396.

(Certificate of excerpt from minutes of meeting of board of directors of Alleghany Corporation, above referred to, submitted by Mr. Daly, consisting [fol. 2025] of four pages, certified by David W. Wallace as secretary of Alleghany Corporation, was received in evidence and marked Defendants' Exhibit 396, as of this date.)

Mr. Daly: As Mr. Wallace stated some time ago, he was attempting to get from I. D. S. monthly statements of I. D. S. for the period November 30, 1949, through May 31, 1950.

Those statements came in today.

I will now offer the statements for each of those months.

I would like to note—and I am sure that the plaintiffs will be pleased to hear this—that the statements show that in Dec- [3061] ember of 1949 the complaint alleges that I. D. S. was making huge sums of money.

There was a loss in that month of $184,797; and, of course, in January, 1950, there was a loss of $213,857.

The Referee: Show them to Mr. Graubard.

Mr. Daly: May we have them marked as one exhibit, with a separate letter for each month, if there is no objection.

The Referee: They may be so marked.

Mr. Graubard: May I inquire as to where the monthly statements are for the period prior to November 30, 1949, during the period of control by Alleghany Corporation in 1949.

[fol. 2026] Mr. Daly: Nobody ever asked for those.

We wrote and asked for what you asked.

As soon as you get what you have asked for, then you ask for something else.

Mr. Graubard: I asked for all the monthly statements that Mr. Young had received.

Mr. Daly: Mr. Young had received none of these. He testified that he had not.

[3062] Mr. Wallace: These came from I. D. S., Mr. Graubard.

Mr. Daly: Mr. Young never saw any of those.

Robert R. Young resumed and testified further as follows:

Mr. Daly: Let us mark them first and then you can continue with your cross-examination.

Mr. Graubard: Just a minute, please.

Cross-examination by Mr. Graubard (Continued):

Q. I show you these statements, Mr. Young, and ask you whether you had seen any copies of those statements before

today (handing documents to the witness)? A. (Examining same) I have no recollection one way or the other.

Q. Have you examined them? A. Yes; I examined them at lunch, and my recollection was that I had never seen a statement of this character, although that does not mean that it might not have crossed my desk at some time.

[fol. 2027] [3063] Mr. Graubard: Is there any record that Mr. Purcell ever saw these statements?

Mr. Daly: I do not know whether Mr. Purcell ever saw them or not.

Mr. Wallace: Not in Alleghany, Mr. Graubard; if you are addressing the question to me.

Mr. Graubard: What you are saying to the court is that there were monthly statements here, and that you have no knowledge that they were ever seen by Mr. Purcell, and which Mr. Young says he never saw. Is that correct?

Mr. Daly: That is Mr. Young's testimony.

Let us have them marked, please, so that we will know what we are talking about.

Mr. Graubard: No, not yet.

Mr. Wallace: Mr. Graubard, I would like to make it clear to you that these reports are not public reports, but that these reports are internal reports of Investors Diversified Services which are not released to the public.

Mr. Graubard: Off the record, please.

[3064] The Referee: Off the record.

(Discussion off the record.)

The Referee: On the record.

Mr. Wallace: In this morning's mail I received from the office of Mr. N. B. Waag, a letter dated December 7, 1955, enclosing the financial statements [fol. 2028] of Investors Diversified Services for November 30, December 31, 1949, and January 31, February 28, March 31, April 30 and May 31, 1950.

I would like to call your attention to the fact that in the lower right hand corner appear the dates upon which these documents were prepared.

Mr. Graubard: May we see Mr. Waag's forwarding letter, sir?

Mr. Wallace: Yes, you may.

(Whereupon, Mr. Wallace handed a document to Mr. Graubard.)

Mr. Lichtenstein: Will you state who Mr. Waag is, or was?

Mr. Wallace: Mr. Waag is vice president and comptroller of I. D. S.

[3065] Mr. Blumenthal: For how long?

Mr. Wallace: For a good number of years.

I think the annual reports show that he has held that position for a period of five years.

The Witness: We did not put him in.

Mr. Wallace: No; he was not from Alleghany.

The Referee: Mark them as a defendants' exhibit, Mr. Reporter.

(Letter above referred to, submitted by Mr. Daly, on the letterhead of Investors Diversified Services, Inc., Minneapolis, dated December 7, 1955, addressed to Mr. Dave Wallace, 230 Park Avenue, New York, [fol. 2029] N. Y., signed, "N. B. Waag," was received in evidence and marked Defendants' Exhibit 397-A, as of this date.)

(Reproduced copy of document above referred to, submitted by Mr. Daly, entitled, "Investors Diversified Services, Inc.—Comparative Balance Sheet, November 30, 1949," consisting of eight pages, was received in evidence and marked Defendants' Exhibit 397-B, as of this date.)

[3066] (Reproduced copy of document above referred to, submitted by Mr. Daly, entitled, "Investors

Diversified Services, Inc.—Comparative Balance Sheet, December 31, 1949," consisting of eight pages, was received in evidence and marked Defendants' Exhibit 397-C as of this date.)

(Reproduced copy of document above referred to, submitted by Mr. Daly, entitled, "Investors Diversified Services, Inc.—Comparative Balance Sheet, January 31, 1950," consisting of eight pages, was received in evidence and marked Defendants' Exhibit 397-D, as of this date.)

(Reproduced copy of document above referred to, submitted by Mr. Daly, entitled, "Investors Diversified Services, Inc.—Comparative Balance Sheet, February 28, 1950," consisting of eight pages, was [fol. 2030] received in evidence and marked Defendants' Exhibit 397-E, as of this date.)

(Reproduced copy of document above referred to, submitted by Mr. Daly, entitled, "Investors Diversified Services, Inc.—Comparative Balance Sheet, March 31, 1950," consisting of eight pages was received in evidence and marked Defendants' [3067] Exhibit 397-F, as of this date.)

(Reproduced copy of document above referred to, submitted by Mr. Daly, entitled, "Investors Diversified Services, Inc.—Comparative Balance Sheet, April 30, 1950," consisting of eight pages, was received in evidence and marked Defendants' Exhibit 397-G, as of this date.)

(Reproduced copy of document above referred to, submitted by Mr. Daly, entitled, "Investors Diversified Services, Inc.—Comparative Balance Sheet, May 31, 1950," consisting of eight pages, was received in evidence and marked Defendants' Exhibit 397-H, as of this date.)

* * *

[3068] Mr. Daly: May I say that I have here now Mr. Young's file on I. D. S. for 1953, which is available for your inspection.

For your information, I may say that I have through it, and I do not think that there is anything in it that [fol. 2031] is of any importance at all; but, of course, you are free to look at it.

With reference to Mr. Young's personal file on I. D. S., for 1954 and 1955, I have not seen those documents, but Mr. Wallace has been through them, and he says that he does not think there is anything of any importance to this case in those files, but that there is a lot of current information in them concerning I. D. S. which is a private matter and which should not be publicly disclosed.

Alleghany is, however, perfectly willing to have the Referee go through those files for the purpose of ascertaining whether, in his opinion, there is anything in them that is germane to the complaint in the action before us, and if there is, we have those offered in [3069] evidence.

Alleghany is not willing to have an outsider examine the files because it does not think it is within the interests of Alleghany or its stockholders to make a public disclosure of those files.

Mr. Graubard: I make the same requests as I did with regard to the minute books of Alleghany Corporation as to those files, Your Honor.

The Referee: The Referee will act accordingly which means he will examine them and offer Mr. Graubard anything contained therein that is, in his opinion, pertinent to this case.

Mr. Graubard: I want to point out to the court that it is now two o'clock and that, for the first time since [fol. 2032] March 30th, when these monthly reports were requested, they have been produced.

They apparently have been produced in the last half of the last day of the cross-examination of Mr. Young,

and I want to say that if we have insufficient time to examine those records properly, giving them the care that they deserve, [3070] and then continue with the cross-examination of Mr. Young, we will have to ask for the continuance of this cross-examination.

The Referee: I will rule on that at the proper time, Mr. Graubard.

[3071] Mr. Lichtenstein: I am now simply referring, Mr. Referee, to the installment certificates sold to the public and the difficulties that I. D. S. had encountered with the Securities and Exchange Commission—

The Referee: When, prior to 1949?

Mr. Lichtenstein: From 1949 through 1950.

The Referee: Don't you think that we have enough testimony on that, Mr. Lichtenstein?

Mr. Lichtenstein: I was not looking for testimony, Mr. Referee, I was looking for the proceedings pending before the Securities and Exchange Commission—

Mr. Daly: That has been put into evidence, what we have been referring to as the consent decree; but what is technically referred to as a judgment is already in evidence as Exhibit 212.

[fol. 2033] Mr. Lichtenstein: Mr. Daly, I was referring to the possibility that the directors of Alleghany Corporation, or certain of the individuals who participated in the exchange of the stock, the [3072] preferred stock of Alleghany Corporation, for the 48,000 shares of the common stock of I. D. S.; and I am referring to that, whether they had prior knowledge of the continuing proceedings being taken before the Securities and Exchange Commission and the possible successful culmination of these proceedings in removing the threat of an injunctive order against selling these investment certificates to the public.

Mr. Daly: Everything in connection with that—that I know of—is already in evidence.

Mr. Lichtenstein: I do not thing so, Mr. Daly, in my opinion.

Mr. Daly: Or they have had access to it.

But let us take it under advisement.

The Referee: All right.

Mr. Lichtenstein: May I make that application at this time, Mr. Referee, to have those files made available to us?

The Referee: You have made the application, and Mr. Daly has taken it under advisement.

I will wait until I hear from him about it.

[3073] Mr. Lichtenstein: Very well, sir.

Thank you.

[fol. 2034] Mr. Graubard: Are there any other exhibits to be introduced at this hour, Mr. Daly?

Mr. Daly: Not at this moment.

As you make the requests, however, we will try to comply with them.

Mr. Graubard: Then let it appear on the record that I have requested—if not previously, then now—the monthly statements of I. D. S., commencing with the acquisition of control by Alleghany in 1949, through to the period of November, 1949.

Mr. Daly: I think that they are completely irrelevant.

I am not going to try to get him.

Mr. Graubard: I also request any monthly statements or any statements not already in evidence, to which Mr. Young had access during the period in question.

I am referring now to the statements concerning which my friend, Mr. Pomerantz, took [3074] Mr. Young's deposition on, in March of 1955, March 29 and March 30, 1955.

Mr. Pomerantz: Mr. Young, I take it, had access to millions of documents, so your description is rather vague.

Would you mind breaking it down more specifically, Mr. Graubard?

Mr. Graubard: Are you asking this on behalf of Mr. Young, Mr. Pomerantz?

Mr. Pomerantz: You just looked at me and asked me as if I knew what you are talking about.

What do you mean by documents that during my examination of Mr. Young Mr. Young had access to, Mr. Graubard?

I am asking you that question so that you and I will understand what you have reference to.

Mr. Graubard: I am referring to Plaintiffs' Exhibit 4, specifically the questions directed by Mr. Haudek to Mr. Pomerantz to Mr. Young, referring to monthly statements and certain other statements, the answers of Mr.

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[3169] Evening Session

(Whereupon, pursuant to the dinner adjournment, the hearing was resumed at seven o'clock p. m.)

[fol. 2035] The Referee: Good evening, gentlemen. Let us come to order.

Proceed, Mr. Graubard.

Mr. Graubard: Let the record show that we are meeting in an office on the 45th floor of the Chrysler Building.

The Referee: All right, the record will show that.

Robert R. Young resumed and testified further as follows:

Cross-Examination by Mr. Graubard: (Continued)

Q. Mr. Young, would you examine Defendants' Exhibit 397-B, please, and in so examining would you state whether you are certain that you saw no such statement in or about 1949 or 1950, coming from I. D. S. (handing document to the witness)? A. (Examining same) I am not certain. That [3170] may well have been one of those reports that reached me once, and I sent word back, "Send me no more of them. This is just too much detail for me."

The Referee: (To Witness) That corresponds with what you said this afternoon, that it may very well have crossed your desk?

The Witness: That is right.

The Referee: And that you had no more independent recollection than that?

The Witness: Yes, sir.

[fol. 2036] The Referee: All right, Mr. Graubard, ask your next question.

By Mr. Graubard:

Q. You are certain that no such report or reports influenced your judgment in regard to I. D. S., during the years 1949 and 1950? A. I am certain that these reports that were put into evidence this afternoon had not the slightest influence on my decision.

Q. So far as you know, Mr. Young, were there any other monthly reports, other than reports of the type that you have in your hand, of a monthly nature, [3171] concerning which you testified on the deposition taken by Mr. Pomerantz? A. I think that when this question came up, I asked Mr. Wallace, out of some curiosity, to find out from I. D. S. just what reports were sent to me at that time; and I have their reply if that would speed things along.

Q. Do you have that reply here, sir? A. (Examining documents.)

The Witness: Mr. Wallace, would you have a copy of what I am talking about?

The letter I D. S. wrote me telling me what they were sending me during this—

The Referee: Off the record—please.

(Discussion off the record.)

The Witness: But I will save your time by telling you that that report specifically excluded earnings statements.

[fol. 2037] (At this point Mr. Daly handed a document to the witness.)

The Witness: This is a letter dated October 11, 1955, from Robert Purcell:

[3172] "Enclosing copy of a letter from Mr. Waag, the I. D. S. vice president and comptroller, with a copy of Mr. Waag's letter to me,"—that is, to Purcell—"dated August 2nd, setting forth the list of reports that were distributed directly to you"—that is, me—"during 1949 and through the middle part of 1950."

And here it is (indicating document.)

That went across my desk and at least does not indicate what I saw or studied.

Mr. Graubard: May we have this copy of a letter from Mr. Waag to Mr. Purcell, dated August 2, 1955, marked in evidence.

The Referee: It will be received in evidence and marked Objectants' Exhibit 400.

(Ribbon copy of letter above referred to, submitted by Mr. Graubard, entitled, "Investors Diversified Services, Inc., Minneapolis," dated August 2, 1955, addressed to Mr. R. Purcell, signed, in blank, "N. B. Waag," was received in evidence and marked Objectants' Exhibit 400, as of this date.)

[fol. 2038] [3173] *By Mr. Graubard:*

Q. Mr. Young, would you be good enough to tell the court which of these documents you made available to Mr. Pomerantz, or any of his associates, prior to April 18, 1955? A. I would just have to ask Mr. Wallace to answer that question.

Mr. Daly: (To Witness) You do not know?

The Witness: No; I haven't the faintest idea.

Q. Would you consult with Mr. Wallace then?

(At this point there was an off the record discussion between Mr. Wallace and the witness.)

The Witness: All this letter indicates, Your Honor, is that they sent me certain reports for one month,

and I evidently sent word back to them, "I don't want this"; and they sent me a bare handful of things here.

Therefore, I haven't the slightest idea as to where they are at the present time.

The Referee: (To Witness) Can you, from reading and looking at that letter, refresh [3174] your recollection as to what documents you gave to Mr. Pomerantz at the examination before trial?

The Witness: I just told Mr. Wallace to produce them, to get busy and do it as quickly as possible.

[fol. 2039] The Referee: You cannot tell us that?

The Witness: No, I cannot.

The Referee: All right, Mr. Graubard.

By Mr. Graubard:

Q. After consulting with Mr. Wallace, can you tell us which of these records were made available to Mr. Pomerantz?

The Referee: He said that he could not.

The Witness: They weren't even made available to me, sir, as I understand it.

Q. The answer is then, Mr. Young, that none of these were made available to Mr. Pomerantz, prior to the 18th—

Mr. Daily: That is not so.

Mr. Wallace: That is not so.

Mr. Daly: Mr. Young does not know.

Mr. Graubard: Does Mr. Wallace know?

[3175] Mr. Wallace: Not without a chance to study that list. I do not know.

Mr. Graubard: I want to call the attention of the court to the fact that while Mr. Young was right in stating that records were sent for the month of August, 1949, only, in the introductory paragraph that preceeded that list of reports there is a grouping of reports sent regularly.

[fol. 2040] The Referee: All right, so noted.

Go to your next question, Mr. Graubard.

[3192] (Whereupon, at this point Mr. Martin handed a file of documents to Mr. Graubard.

The Referee: Off the record.

(Discussion off the record.)

The Referee: On the record.

Mr. Graubard: Mr. Referee, it is now eight o'clock at night, and I find that I am just physically unable to read all of the documents that are in this file.

[3193] The Referee: You mean further in your examination of the papers that have just been handed to you?

Mr. Graubard: That is right; and any questions that may arise with respect to them.

The Referee: Otherwise you have completed your cross-examination?

Mr. Graubard: Subject, of course,—

The Referee: To the statement you put on the record?

Mr. Graubard: Yes; and subject to any data that may be put in by the proponents until the conclusion of their case.

There are still some documents that are awaited.

I want to repeat again—and I do want to make this very clear—that I do not intend to call Mr. Young back unless there is good and sufficient reason therefore; and I will make those reasons known to the court.

The Referee: All right.

As to your cross-examination on all matters [3194] that have been inquired into thus far, Mr. Graubard, you have finished; is that right?

Mr. Graubard: With the qualifications aforesaid.

[fol. 2041] The Referee: That is what I said.

Is there any further cross-examination of Mr. Young?

Mr. Bijur: Yes, Your Honor.

Mr. Daly.: I would like to say that the records that Mr. Graubard says he is now too tired to examine were available this afternoon and, of course, could have been examined during the recess.

Mr. Graubard: I want to state that between the hours of five to seven tonight I not only went home and attended to my personal problems, including eating my dinner, but that I did examine pages and pages of financial data, which Mr. Young testified was just too much detail for him.

I respectfully suggest that the Referee—

The Referee: The Referee quite understands your position and the limited amount of time that you had between five and seven p.m.

• • •

[fol. 2042]

[3241] SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

Hotel New Yorker,
35th & Seventh
Avenue,
New York, N. Y.,
December 14, 1955,
10:30 a. m.

Before:

HON. ROBERT J. FITZSIMMONS,
Referee.

• • •

[3320] *Cross-Examination* (Continued)

By Mr. Graubard:

Q. Mr. Wallace, were the documents introduced into evidence today made available to Mr. Pomerantz, prior to the

execution of the settlement? A. I do not remember. I turned a lot of documents over to Lord, Day & Lord.

[fol. 2043] Q. Were all these documents introduced today turned over to Lord, Day & Lord? A. I would have no way of recalling at the present time just what ones were and what ones were not.

Obviously this last exhibit, Defendants' Exhibit 426, I did not even have until November, 1955.

Q. Were the exhibits which I introduced into evidence out of the files of Alleghany, at this hearing made available to Mr. Pomerantz prior to April 18, 1955? [3321] A. Our files were made available to Lord, Day & Lord, and Lord, Day & Lord was dealing with Mr. Pomerantz.

I just do not know what they did with respect to Mr. Pomerantz in that matter.

The Referee: (To Witness) However, you made them available to Lord, Day & Lord?

The Witness: Yes, sir.

Q. And you have no information then, Mr. Wallace, as to which of these files, other than those particular ones of which you may have happened to have personal knowledge, were made available to the plaintiffs in this consolidated action? A. I would say that that is substantially true. I know that a great many papers were made available to them.

• • •

[fol. 2044]

[3361]SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

Hotel New Yorker,
34th Street & 8th Avenue,
New York, N. Y.,
December 15, 1955,
10:30 a. m.

Before:

HON. ROBERT J. FITZSIMMONS,
Referee.

• • •

[3396] *By Mr. Graubard*:

Q. Mr. Young, do you have with you the attachments to the letter referred to on page 3312 of the transcript?

Mr. Daly: We do not have it here.

Mr. Graubard: Will you produce those, Mr. Daly?

Mr. Daly: Yes; I intended to.

[fol. 2045] Mr. Graubard: Now?

Mr. Daly: No; I do not have them here.

I had so many things to produce that I just did not get around to it.

The Referee: May I interrupt you at this time, and state, for the record, that Dr. Daly caused to be handed up to me a file marked "Robert R. Young, personal."

[3397] It covers the years 1954 and 1955.

I have examined all the papers in that file, and I find that none of them have any relevancy to this proceeding, with the exception of a letter dated May 14, 1954; another one dated May 24, 1954; and some other mate-

rial, including telegrams and a suggestion having to do with material used in advertising connected with the proxy fight on New York Central.

I will therefore hand these six or seven papers over to Mr. Graubard and Mr. Phillips for whatever use they may wish to make of them.

(Whereupon, the Referee handed several documents to Mr. Graubard.)

Mr. Graubard: Does Mr. Daly desire to look at them first?

Have you seen these papers, Mr. Daly?

Mr. Daly: I have gone through the whole file. I do not know what those particular papers are. You may go ahead and look at them, however.

[fol. 2046] Mr. Graubard: All right.

[3398] The Referee: Off the record.

(Discussion off the record.)

The Referee: Let us proceed, gentlemen.

Mr. Graubard: May I state for the record that I have seen the papers handed to me by the Referee, and I deem that they are not pertinent to the issues before the court.

By Mr. Graubard:

Q. Mr .Young, you had turned over to Mr. Martin your personal 1953 files relating to I. D. S.? A. Yes.

Q. Mr. Martin has shown these files to me, and has advised me that these are the complete files which were entrusted to his care.

Are there any files pertaining to your activities in regard to I. D. S., for 1953, other than those which were shown to me this morning? A. Well, if so, I have no knowledge of them.

Q. Did you take the occasion to review that file, Mr. Young? A. I certainly never reviewed it, other than to glance at it casually.

Q. Can you tell the court what memoranda there [3399] are in this file which would indicate that you were giving, in 1953, special care and attention to the affairs of I. D. S.?

Mr. Daly: I object to that question.

They have been through the file.

The Referee: Objection sustained.

[fol. 2047] Mr. Graubard: I am endeavoring to avoid putting that file, in its entirety, into evidence, Your Honor; and if I may press this line of questioning for such purpose, I would like to explain in advance what I propose to do.

Have I your permission, sir?

The Referee: You have.

Mr. Graubard: This file includes, as far as bulk is concerned—

The Referee: Is this the file that was handed to you the other night?

Mr. Graubard: Yes, sir.

The Referee: That you looked at again this morning?

Mr. Graubard: Yes, sir.

The Referee: And which I heard Mr. Martin [3400] say he had sent back?

Mr. Graubard: That is right, sir.

Mr. Martin: It is just a personal file.

There were other files of Alleghany Corporation that Mr. Graubard examined.

The Referee: All right.

Off the record.

(Discussion off the record.)

The Referee: Mr. Graubard, you looked at the file?

Mr. Graubard: Yes, sir.

The Referee: And you examined the papers therein?

[fol. 2048] Mr. Graubard: Yes, sir.

The Referee: Did you find anything there that aroused your curiosity to the extent that you would like to ask Mr. Young some questions about it?

Mr. Graubard: Yes. I would like to ask Mr. Young, Your Honor: where are the memoranda which would indicate that he maintained close surveillance of I. D. S.'s affairs? And certainly they are not in that file.

• • •

[3414] Q. Did you see the file yourself, Mr. Young, pertaining to this issue with the Securities and Exchange Commission, when you made up this statement about three or four months ago with the I. D. S. officers? A. When I produced this document I stated, in the first instance, that the attachments to it were so voluminous that I did not bring them; and I have just requested Mr. Wallace to please call his office and get those things over here now.

Q. So that you did see that file of the Securities and Exchange Commission when this statement was prepared?

[3415] Mr. Daly: I object to Mr. Graubard talking about a file. Mr. Young saw certain papers.

Mr. Graubard: Mr. Young just talked about a voluminous file.

The Referee: The objection is overruled.

Go ahead, Mr. Graubard.

The Witness: I saw a file of correspondence and exhibits between I. D. S. and the S. E. C., which related to these seven items, which I did not bring with me; [fol. 2049] and just as to which of these seven items those exhibits related, I just do not remember.

Mr. Graubard: Can we expect those papers shortly?

Mr. Wallace: Off the record, please.

The Referee: Off the record.

(Discussion off the record.)

Mr. Daly: They apparently are not here.

Mr. Graubard: All right. Then may we go on to another point, Your Honor?

The Referee: Yes, of course. Proceed, Mr. Graubard.

• • •

[3426] Mr. Wallace: These documents were prepared in slightly different form a few months ago, and were put in the form they went in now I think several weeks ago.

By Mr. Graubard:

Q. Were these exhibits ever shown to Mr. Pomerantz?

Mr. Wallace: Again, I think I can answer that.

Mr. Graubard: All right.

Mr. Wallace: Mr. Young relied on me to turn over all pertinent documents to Mr. Daly or Mr. Scott, who I in turn relied upon to confer with Mr. Haudek and Mr. Pomerantz.

[fol. 2050] Mr. Graubard: Then the joint answer is, I [3427] presume, that you do not know?

Mr. Wallace: The joint answer is that we do not know.

The Witness: Am I included in that joint answer?

Mr. Wallace: I included you, sir.

You can exclude yourself, if you want to.

The Witness: I think we ought to ask Mr. Daly.

Mr. Daly: I have turned over a lot of documents. I cannot remember each one that I turned over.

Mr. Pomerantz: And Mr. Pomerantz is here prepared to answer questions, if you want to ask it of him.

The Witness: I would like to say this: most of that material is available in the public records of the S. E. C.

Mr. Daly: Of course it is.

The Referee: What is the answer, Mr. Pomerantz? Were they ever turned over to you?

Mr. Pomerantz: I do not know at this moment, [3428] Your Honor. I have seen many thousands of documents, and I cannot, out of my head, certify as to whether I saw or did not see a particular document.

Mr. Wallace: I might say, too, Your Honor, that the documents concerning Mr. Young and Mrs. Young are [fol. 2051] reported on Form 4s, which are available

which are available in New York City, in the Stock Exchange.

The Witness: And the S. E. C.

Mr. Wallace: And the S. E. C.

You are quite correct, Mr. Young.

Mr. Pomerantz: I am informed by my accountant, Mr. Fred Klinger, that he did indeed see the documents, that he made a digest of them, and the digest was put before me; so that I did see the documents in digest form.

Mr. Graubard: Thank you, sir.

Mr. Pomerantz: You're welcome.

Mr. Graubard: I did not ask Mr. Pomerantz a question, but I appreciate the answer.

Mr. Daly: You did not, but the Referee did.

Mr. Pomerantz: You certainly made a very [3429] broad innuendo that perhaps I was not quite prepared in this litigation.

Mr. Graubard: This is no innuendo, sir.

Mr. Pomerantz: Then why did you ask this question?

Mr. Graubard: We expect to show quite affirmatively, Mr. Pomerantz, that there were many documents in this litigation that were not shown to either you or your associates.

• • •

[3430] The Referee: The objection is overruled.

So that the record may show the reason for my rul- [fol. 2052] ing, Mr. Graubard is now asking a question based on exhibits that were placed in evidence on your redirect of last Thursday night—at least in part.

A. If I understand the question correctly, I believe I am being responsive in saying that Mr. Scott and Mr. Pomerantz and I lunched for about three hours one day at the Cloud Club, and I had many documents there with me.

My purpose was to give him the whole background on all of these allegations in the hope that I could persuade him that his complaint was groundless.

Mr. Pomerantz: (To Witness) But I was unpersuaded?

The Witness: I think that in spite of the good job I did you were improperly unpersuaded.

By Mr. Graubard:

Q. Are you referring to a conference that antedated the taking of the depositions by Mr. Haudek [3431] and Mr. Pomerantz? A. Yes.

Q. Subsequent to the taking of the depositions you had no direct conference with them, concerning the settlement —of any type—nor did you directly turn over to them any papers that are now exhibits? A. There was about a six-month period in there when Mr. Daly and Mr. Scott were constantly calling me up and asking me for additional information which Pomerantz wanted.

Q. I understand that, Mr. Young.

[fol. 2053] But you yourself had no direct conference; is that correct? A. No; I think counsel advised me to stay away from this tough fellow.

Q. You directly turned over to Mr. Pomerantz or his associates no papers, you yourself? A. No; my counsel kept me insulated from Mr. Pomerantz.

• • •

[3449] *By Mr. Graubard:*

Q. Mr. Wallace, do you have any documents to submit to the court today? A. Yes; I have the documents that Mr. Young directed me to supply in answer to your request.

I have here a memorandum dated November 29th, by Mr. Harold K. Bradford.

Mr. Bijur: What year, Mr. Wallace?

The Witness: 1949.

I had my secretary—

Mr. Graubard: Just a minute, please.

The Referee: Off the record.

(Discussion off the record.)

Mr. Graubard: In regard to the memorandum [3450] just shown me, I see no purpose in adding that to the record.

Mr. Daly: We produced it.

The Referee: All right, next question.

[fol. 2054] *By Mr. Graubard*:

Q. What is the next item, Mr. Wallace? A. I have here a number of documents, all clipped together.

The first one is a memorandum from the chief accountant of the S. E. C. to the Commission, dated May 14, 1948; and a memorandum—

Q. Before you describe them in detail, Mr. Wallace, can you just tell us which batch of papers comprises a request for evidence here; what does this relate to? A. These are, again, the papers that you asked Mr. Young for this morning, these various S. E. C. memoranda.

I am handing you the entire folder that Mr. Young had given to me.

Mr. Daly: This is the folder, Mr. Graubard, that was referred to by Mr. Young this morning,

• • •

[3451] The Witness: I do not think this is Mr. Young's S. E. C. folder, Mr. Daly. This is some material that he got somewhere or other that I do not even know about.

Mr. Daly: It was also referred to by Mr. Young in his testimony on Thursday.

You asked him to produce it and Mr. Wallace is now producing it.

Mr. Haudek: Your Honor, may I suggest that one of the papers that was already exhibited to Mr. Grau- [fol. 2055] bard, a memorandum of Mr. H. K. Bradford, dated November 29, 1949, that that memorandum

should be marked for identification; and I would like to reserve the privilege of offering it in evidence.

The Referee: Mark it for identification.

(Copy of memorandum above referred to, submitted by Mr. Haudek, dated November 29, 1949, entitled, "Memorandum:—re: Securities and [3452] Exchange Commission Conferences I spent November 21 with the various members of the S. E. C. and members of the staff," etcetera, consisting of four pages, signed, in blank, "H. K. Bradford," was marked Plaintiffs' Exhibit 436 for identification, as of this date.)

Mr. Haudek: May I just ask Mr. Wallace the following question:

In what connection was this memorandum produced? Was that one of the documents that Mr. Young had examined in preparing his own seven-point memorandum?

The Witness: Yes, sir.

Mr. Haudek: Your Honor, I now offer this document, Plaintiffs' Exhibit 436 for identification, into evidence.

The Referee: It will be received in evidence and marked Plaintiffs' Exhibit 436.

• • •

[fol. 2056] [3454] Mr. Graubard: All right.

Your Honor, I ask that these documents be marked for identification.

The Referee: Mark them Objectants' Exhibits 437-A, B, and so on, for identification, Mr. Reporter.

(Sheaf of documents above referred to, submitted by Mr. Graubard, were marked as follows:)

(Ribbon copy of document entitled, "Memorandum —2: The Commission—from: Chief Accountant—Subject: Adoption of a New Article 6 (B) in Regu-

lation S-X-Face-Amounts Certificate Investment Companies," consisting of five pages, was marked Objectants' Exhibit 437-A for identification, as of this date.)

(Ribbon copy of small slip of paper entitled, "Copy," was marked Objectants' Exhibit 437-B for identification, as of this date.)

(Ribbon copy of document entitled "Memorandum —re: Investors Syndicate—Proposed Article 6 B [3455] of Regulation S-X," consisting of two pages, signed, in blank, "J. K. McClare," and containing in the lower left hand corner of the second page the date August 16, 1948," was marked Objectants' Exhibit 437-C for identification, as of this date.)

[fol. 2057] (Letter on the letterhead of Securities and Exchange Commission, Washington, dated November 13, 1950, addressed to Mr. R. W. Purcell, Alleghany Corporation, Chrysler Building, New York 17, New York, signed, "Baldwin B. Hane," Director Division of Corporation Finance, was marked Objectants' Exhibit 437-D for identification, as of this date.)

(Copy of document entitled "Article 6 B. Face-Amount Certificate Investment Companies," consisting of 25 pages, was marked Objectants' Exhibit 437-E, as of this date.)

(Mimeographed copy of document entitled "Preliminary Draft of 10-31-49—Securities and Exchange Commission, Washington, D. C.—Form N-8B-4—Registration Statement of Face-Amount Certificate Companies—Pursuant to [3456] Section 8 (b) of the Investment Company Act of 1940," consisting of 16 pages, was marked Objectants' Exhibit 437-F for identification, as of this date.)

• • •

[3461] Mr. Daly: That is all I have, Your Honor.

Mr. Graubard: And will the record show, sir, that Mr. Wallace will arrange, through Mr. Daly, for us to see the additional exhibits that have been requested, [fol. 2058] and that we will endeavor to put them in as a group or seriatim, as the Referee desires, at the next hearing.

The Witness: Yes, sir.

The Referee: You are excused, Mr. Wallace.

• • • •

[fol. 2059]

[3900] SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

Bar Association,
42 West 44th Street,
New York, N. Y.,
January 5, 1956

Before:

HON. ROBERT J. FITZSIMMONS,
Referee.

• • •

[4028] *By Mr. Daly*:

Q. I show you Exhibit 27-E, and ask you if that is the copy of the letter that you received (handing document to the witness)? A. (Examining same) I believe it is.

Q. Did you receive it on or about the date of that letter? A. Approximately so.

Q. So that you had spoken to Mr. Wallace some time previous to the receipt of that letter? A. Yes.

[fol. 2060] Q. Mr. Purcell, you testified this morning that when you left New York for Minneapolis you took certain of the I. D. S. files with you. A. Yes.

Q. Will you explain to us, generally, what files you took with you and what became of those files thereafter? A. When I accepted the presidency of I. D. S. I was immediately plunged into a very busy schedule, and then I was sick for a week or so, and, finally, I didn't have any time to review files and decide which I should leave and which I should take.

[4029] Therefore, with just a minimum amount of sorting I took all of the files which were in my possession, but they consisted primarily of a volume of reports.

This company produces a very large number of reports, many of which I brought here today, that nobody has asked me about.

Those files went to Minneapolis, and then, when I returned from Minneapolis in 1955, I did have a little better chance to look and see what was there, and a great deal of it was—represented duplicates of financial reports and monthly statements, and things of that kind; and not wanting to bother to ship those back to New York, I discarded those duplicates.

Everything else I shipped back to New York, and turned over to Mr. Wallace.

Mr. Daly: May I say that Mr. Wallace has shown to you, or Mr. George Martin has shown to you, everything that was received from Mr. Purcell, in those cabinets, referring to I. D. S.

I have no further questions.

[fol. 2061] [4030] *Redirect Examination by Mr. Graubard*:

Q. You said "monthly reports"? A. Yes.

Q. You did not send those back to Alleghany Corporation, did you, Mr. Purcell? A. Not to the—let me say that in 1949 and 1950 I kept my files in Cleveland, and reports

accumulated so rapidly that I discarded reports in Cleveland.

Then I accumulated more reports in New York, and I took them to Minneapolis, discarded some of those—those would be in 1951 and 1952 reports, and I discarded them to the extent that they were meaningless, and sent them back—and sent the files back to New York.

Q. I asked you that question only for the purpose of establishing that you did have monthly reports. A. Yes, yes.

Q. In 1950? A. Yes.

Q. And in 1949? [4031] A. Yes.

Q. And that where those reports contained information of an important nature, in your judgment, you discussed those reports with Mr. Young?

Mr. Daly: When?

Q. Or discussed that information with Mr. Young, as promptly as possible? A. Well, when I felt it of sufficient importance to do that, yes.

• • •

[fol. 2161]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-41

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/54.

SADIE ZENN, FREDA BLUMENTHAL, HENRY MENCHER, ABRAHAM L. FISTEL, JEANNETTE ANNENBERG, BERNARD LIEBERMAN, NICHOLAS SCHEPIS, JACOB HAIMOWITZ and FRANCES KOENIG,

Plaintiffs,

—against—

J. J. ANZALONE
FRANK B. BATEMAN
O. HENRY BRIGGS
THOMAS J. DEEGAN, JR.
WALTER W. FOSKETT
HENRY J. GUILD
ALLAN P. KIRBY
HERMAN R. NEFF
CLINT W. MURCHISON
BROOKS POTTER
R. W. PURCELL
SIDNEY W. RICHARDSON
RADCLIFFE SWINNERTON
ANDREW VAN PELT

ANITA O'KEEFE YOUNG, as Executrix under the Last Will and Testament of Robert R. Young, deceased,

CLINT W. MURCHISON, JR. and JOHN D. MURCHISON, individually and as partners, doing business under the firm name and style of MURCHISON BROTHERS,

CHESAPEAKE INDUSTRIES, INC., NEW YORK CENTRAL RAILROAD COMPANY and ALLEGHANY CORPORATION,

Defendants.

MEMORANDUM IN OPPOSITION TO MOTION FOR APPROVAL OF PROPOSED SETTLEMENT

GRAUBARD & MOSKOVITZ
Attorneys for Objectant,
Samuel A. Rosen
40 Wall Street
New York 5, N. Y.

Of Counsel:

SEYMOUR GRAUBARD
PHILIP KAZON
SHELDON D. CAMHY

[fol. 2162]

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/54.

SADIE ZENN, FREDA BLUMENTHAL, HENRY MENCHER, ABRAHAM L. FISTEL, JEANNETTE ANNENBERG, BERNARD LIEBERMAN, NICHOLAS SCHEPIS, JACOB HAIMOWITZ and FRANCES KOENIG,

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CHESAPEAKE INDUSTRIES, INC., NEW YORK CENTRAL RAILROAD COMPANY and ALLEGHANY CORPORATION,

Defendants.

MEMORANDUM IN OPPOSITION TO MOTION FOR APPROVAL OF PROPOSED SETTLEMENT

This memorandum is submitted on behalf of Samuel A. Rosen, a stockholder of defendant, Alleghany Corporation (hereinafter referred to as "Alleghany") in opposition to the motion of Alleghany and certain of the defendants for

[fol. 2166] an order affirming as "fair, reasonable and adequate" a proposed settlement of this litigation.

The long and complicated history of this litigation is set forth in the Report of the Referee, Hon. Robert J. Fitzsimmons. In the interests of brevity we shall not repeat this history. Similarly we have eliminated from this memorandum any discussion of certain of the causes of action being compromised because of their comparatively minor significance to the overall result.

The Value of the Claims

Although the Referee purports to evaluate what Alleghany is getting on this compromise he makes no attempt to show the amount of the claims Alleghany is giving up. But

> "This Court *on behalf of its wards*, the unrepresented stockholders, cannot approve a compromise settlement until the Court knows from what debts, and from what size claims it is releasing defendant[s]."
>
> *Heddendorf* v. *Goldfine*, Civ. # 56-356 W. (U. S. D. C. D. Mass., Nov. 5, 1958) (a copy of the opinion is annexed hereto as Appendix A).

The damages claimed for the most part rest on the basis of stock market values which vary from time to time. We summarize below the total damages claimed. These totals are derived from the individual claims discussed below. The damages on each particular cause of action and the methods used in computing them are set forth in the discussions of the particular claims and in Appendix B.

Damages as of the time of the hearing (1955-56)	$42,000,000
Present Damages (January, 1959)	92,419,965

[fol. 2167] The huge amount of the damages involved is due mainly to the tremendous increases in value of the securities that are the subject of the action. Thus the stock of IDS, which in 1950, Young and Kirby acquired from Alleghany at $8 a share, had a market value, after a five for one split, of $337.50 a share as of the time of the hearing, and has a present market value of $1005 a share. The New York Central stock that Young and Kirby bought for $19, and Murchison and Richardson bought for $25 had a price of $49 at the time of the hearing. Although the price is now only $29 a share, the difference is more than made up by the tremendous increase in the price of IDS.

If, as we believe, Alleghany is entitled to recover the fruits of defendants' breaches of duty, it would be entitled to them "however enhanced in value". *Marcus* v. *Otis*, 169 F. 2d 649 (2d Cir. 1948) at p. 654.

Naturally these figures are empty numbers unless the claims they represent have some degree of merit. We firmly believe that they do. Indeed as to certain (and the most substantial) of them, we feel that based merely upon the evidence adduced at the hearings they could be tried to judgment in plaintiffs' favor. In any event we cannot accept the premise upon which the the Referee's report is evidently based which is that each of them is without merit.

The Terms of the Proposed Settlement

Under the settlement recommended by the Referee, Alleghany is to receive

1. One million dollars in cash

2. Modification of certain joint venture agreements between Alleghany and defendants Murchison Brothers to provide that for the purposes of the guarantee against loss by Murchison Brothers to Alleghany, profits on one joint

[fol. 2168] venture may not be offset against losses in another. Without explanation the Referee has valued this modification at a minimum of $300,000 (Rep. 121). Presumably it is based on the same valuation contained in the brief of General Counsel submitted to the Referee in March, 1956. In view of the fact that the value of the guarantee depends upon the market prices of securities held by the joint ventures, in the absence of evidence as to current market values, this Court can hardly place a dollar value on the amendments to the guarantees.

3. Restoration of voting control of Investors Diversified Services, Inc. by the Murchison Brothers to Alleghany.

Although the Referee has found that this part of the settlement has "a very substantial value" (Rep. 118), a conclusion with which we are in complete agreement, his Report provides no basis for this conclusion except our own estimate that control of IDS is worth at least $5 million; and that of counsel for other stockholders that it is worth upwards of $1,750,000. We have some doubt whether our valuation of the value of control is any more competent evidence upon which this Court can base its approval of the settlement than was General Counsel's valuation of the amendment to the guarantee. It would seem to us elementary that this Court, in its role as the protector of absent stockholders, may not approve this settlement without evaluating the benefits to Alleghany of the proposed settlement. We are satisfied that our estimate of value of IDS control is accurate and we were prepared to submit evidence to the Referee in support thereof. As that evidence was rejected (4512, 4615), this Court is left with no basis, other than the above estimates, for making a determination of value of the IDS control. Notwithstanding, we submit the offer is still inadequate.

One of the claims alleged in the complaint was one for reimbursement of $1,369,775, the expenses of the New York Central proxy fight. A major premise of the proposed set-

[fol. 2169] tlement was that Alleghany had been reimbursed in full by the New York Central for the proxy fight expenses (Stipulation of Settlement, par. 2(f)). It now appears (Rep. 88) that Alleghany has been required to repay to the New York Central $150,765. Accordingly, the value of the settlement has been reduced by that amount.

The Issues To Be Resolved

This memorandum is divided into two general categories of objections to the Report. The first deals with errors of fact and law in the Referee's Report in evaluating the causes of action to be compromised. These objections are based on the evidence as admitted. The second category of objections deals with the errors of the Referee in approving the manner in which the settlement was arrived at and certain major errors in the conduct of the hearing upon which the Report is based.

Under Part I we discuss the Referee's findings with respect to the following causes of action:

A. 1950 IDS exchange.

B. The causes of action arising out of Alleghany's participation in the New York Central acquisition.

C. Transfer of control of IDS to the Murchisons.

D. The defendants' violations of the Investment Company Act.

Under Part II we present the following issues for resolution by this Court:

A. Whether a proposed settlement may be approved where the Referee has refused to call the most important defendant to testify, particularly where the Referee, in order to sustain the settlement, has drawn repeated inferences from disputed facts involving the missing defendant which inferences are uniformly favorable to the defendants.

[fol. 2170] B. Whether a proposed settlement may be approved where proponents settle for zero amount valuable causes of action originated by other plaintiffs whom proponents have excluded from its settlement negotiations.

C. Whether a proposed lump sum settlement involving several diverse important causes of action may be approved where the record is barren of a single appraisal of value for any one of them.

PART I

The 1950 IDS Cause of Action

After discussing this cause of action for some 20 pages in his report the Referee expressed the following conclusion:

> " • • • a trial court would give judgment to defendants on the merits • • •" (Rep. 63).

It is submitted that the above conclusion rests upon a misinterpretation and in certain cases a complete disregard of the evidence and a failure to apply the proper rules of law as hereinafter demonstrated.

Nature and Value of the Claim

This cause of action seeks recission of a transaction between Alleghany Corporation and Young, Kirby, Purcell and Anzalone, four officer-directors of Alleghany, whereby the above-mentioned four defendants took from Alleghany 48,225.61 shares of Class A Stock of Investors Diversified Services, Inc. and gave to Alleghany in exchange certain Alleghany preferred stock.

If the transaction were fully rescinded, as demanded in the complaint it would have brought to Alleghany as of the time of the hearings a recovery worth $15,000,000 (Rep. 63). Under an alternate theory of recovery proposed by gen-

[fol. 2171] eral counsel for the plaintiffs, which omits the value of the IDS shares taken by Purcell and gives only partial rescission of the shares taken by Young and Kirby, the value of this claim would be $8,600,000 (Rep. 63).

Using the current (January 9, 1959) prices the claim under our theory is presently worth $47,183,455 and under general counsel's theory $27,289,937 (see Appendix B (A) (i), (iii)).

The Following Facts Are Undisputed:

Alleghany is a Maryland corporation, whose business consists substantially in the investing of its funds in the securities of other corporations. During 1949-1950, defendants Young, Kirby, Anzalone and Purcell were four of the directors of Alleghany. Young was Chairman of the Board, Kirby was President, and Purcell was Vice-Chairman of the Board. Anzalone was Secretary (Ex. 24).

Alleghany Acquires IDS

Late in 1948, a New York broker representing Messrs. Bert Gamble and Hal Roach interested Young in the acquisition of a large investment in Investors Diversified Services, Inc. (hereinafter referred to as "IDS"), a Minnesota corporation, carrying on business as an investment company (Rep. 42). The outstanding capital stock of IDS consisted of voting common stock and Class A stock. Each participated identically with the other in the assets and earnings of IDS. The sole difference between them was that the common stock was entitled to vote and the Class A was not (Ex. 25, pp. 3 and 4). Neither class was listed on any national exchange but both were traded over the counter at about the same prices (between $5 and $8) (Young 2412-14). Gamble and Roach, who then owned about 80% of the voting stock of IDS and controlled its management, wanted $20 per share for their voting stock because it represented control (Exs. 268, 319, 368).

[fol. 2172] Alleghany investigated the desirability of a substantial investment in IDS. Financial and operational reports on IDS were made by members of Alleghany's staff and by others. Principally active in this investigation were Purcell and Anzalone (Rep. 43, Young 2486). The substance of these reports and other available information was that a substantial investment in IDS would entail serious risk but would also have tremendous speculative potential (Exs. 363, 393, 317). While IDS and its subsidiaries controlled a vast empire of assets, earnings from operations were then insufficient to maintain adequate reserves to meet fixed payments upon the certificates which IDS and its subsidiaries had issued to the public (Ex. 4, pp. 70, 71; Ex. 393, p. 14; Young 2903-04). Because of this situation, IDS was under investigation by the SEC and other agencies in the securities field, and it seemed that the entire pyramid might collapse at any time (Young 2861-63; 3416-17; Purcell 3950-51; 3964-65; Ex. 453). On the other hand, the situation represented one of extreme leverage since IDS obligations on its outstanding certificates were at a low rate of interest, and, once those payments and appropriate reserves for maturing certificates were met, the income from the huge investment potential in the company would be almost pure profit to IDS. If, therefore, IDS started to earn a substantial income, it had the possibility of expanding into a venture of astronomic proportions (Exs. 317, 393).

Based upon this analysis, Young recommended to Alleghany's Board of Directors that Alleghany purchase a substantial interest in IDS as an extraordinary speculation of huge potentialities (Ex. 317). He explained that ordinarily a substantial purchase of the non-voting Class A stock at market prices of about $6 would be preferable, but that Alleghany could not embark on so substantial an investment in so shaky a company without assuming management, and to assume management, Alleghany would have to buy control from Gamble and Roach (Ex. 317).

[fol. 2173] Accordingly, in April of 1949, Alleghany proceeded to acquire 90% of the voting stock of IDS. It bought the major portion of this stock privately from Gamble and Roach at $20 per share (Ex. 368C.), paying, in effect, a bonus of almost $1,000,000 over market prices for control. At the same time and as part of the same investment, Alleghany purchased 48,225.61 shares of IDS non-voting Class A on the open market at an average price of $8.145 per share (Young 2314, 2733). The purpose of this acquisition was to have a large holding of Class A stock at the lower price of $8 which would more quickly reap the benefits of any increased profits.

Thereafter, defendants Purcell and Anzalone participated closely in the affairs of IDS. Purcell devoted himself almost exclusively to IDS and during the summer of 1949 moved his office to Minneapolis and assumed direct management functions (Young 2715; Purcell 3939). In so doing, he obtained an intimate working knowledge of the affairs of IDS, and kept Young advised from time to time as to the progress of the venture (Young 2715, Exs. 325, 327).

In 1948, the year prior to Alleghany's assumption of control, IDS earned a profit of $374,335. During 1949, the year the Alleghany management took over, IDS showed a net profit of $1,365,485 ($4.70 per share) (Ex. 18, p. 6). In 1950, IDS showed a $6,454,411 profit ($22 per share) (Ex. 97). The principal source of this spectacular six and one-half million dollar increase in earnings from 1948 to 1950 was income in the form of commissions and fees from IDS' activity in the filed of FHA and VA mortgages and construction loans (Ex. 97). By the end of 1949, IDS had booked enough new mortgage business of this type for 1950 to produce additional net earnings for 1950 in excess of $5 million over 1949 or almost 5 times 1949 earnings (Ex. 327). In addition, the above mortgage transactions booked in 1949 yielded an additional $500,000 in interest income to IDS in 1950 (Ex. 327).

[fol. 2174]

The Defendants Take IDS for Themselves

In the summer of 1949, after being with IDS for a number of months, Purcell wrote to Young requesting that Alleghany give him an interest in IDS for the work he was doing (Ex. 390). Thereafter in August of 1949 an arrangement was arrived at between Alleghany and Purcell whereby Purcell was to use his best efforts to purchase substantial quantities of IDS non-voting Class A stock for himself on the open market at the best prices then available. Alleghany undertook to guarantee Purcell his cost on shares so purchased (Ex. 390).

In the fall of 1949 Purcell attempted to purchase IDS Class A shares on the open market for his own account, but was unable to acquire any substantial quantity of the stock at market prices because of the thinness of the market and the absence of any sizeable quantity of stock for sale (Ex. 422).

In November 1949, Young, Purcell and Anzalone discussed the possibility of having Alleghany offer its holdings of IDS Class A stock to its officers in exchange for Alleghany preferred stock held by them (Ex. 4, pp. 40-44). As a result of those discussions, on December 6, 1949, Alleghany's Board resolved to offer to its officers, its portfolio holdings of 48,225.61 IDS Class A shares in exchange for preferred stock of Alleghany. Under the terms of the resolution the prices at which the stocks were to be exchanged were the market prices on an exchange date to be fixed, except that, if market on the IDS stock was below cost, the officers would have to pay cost ($8.1453) to Alleghany. The exchange offer was made conditional upon acceptance by the officers on or before January 20, 1950, and was also made subject to ratification by Alleghany's stockholders at the annual meeting to be held May 3, 1950 (Ex. 27).

Young and Kirby were the largest holders of preferred stock of Alleghany. Anzalone also held preferred stock.

[fol. 2175] All three were officers and, therefore, qualified to enter into the exchange (Ex. 30). At about the same time, Young promised Purcell that, in lieu of his trying to purchase shares in the open market, Young and Kirby would allocate to him a substantial portion of the IDS Class A shares they would receive under the exchange (Young 2742). Accordingly, Purcell stopped trying to buy the stock on the open market (Ex. 422; Purcell 4018).*

Young, Kirby, Purcell and Anzalone constituted a majority of the members at the meeting of the board on December 6, 1949, which authorized the exchange offer. Although each of them had an interest therein and stood to benefit therefrom, each cast his vote for the exchange offer (Ex. 27).

The Defendants' Inside Information

The exchange date fixed under the exchange offer was January 20, 1950, after which it ceased to be binding upon Alleghany. Nevertheless, neither Young nor Kirby, by word or deed, accepted said offer or tendered their preferred stock until over a month later (Ex. 331). They did not do so until they had received certain information about IDS from their expert, Purcell, as hereinafter set forth.

On February 11, 1950, Purcell wrote a letter (Ex. 327) to Young and Kirby. That letter set forth in detail a summary of the substantial improvements in the operations of IDS which had occurred during 1949. Specifically it reported that enough mortgage business for 1950 had already been booked in 1949 to add an additional $5,500,000 to IDS' earnings in 1950.

In addition, Purcell reported a substantial increase in IDS certificate and fund sales, an increase in the overall net rate of interest IDS received, a substantial reduction

* The Referee found to the contrary on the basis of Purcell's purchase of 650 shares (Rep. 57, Ex. 422).

[fol. 2176] of overhead expense, and the organization of a new Canadian subsidiary to begin operations in 1950. He also reported that IDS would soon be in a position to make proper accruals for certificate reserves and thereby end its major difficulties with the SEC.

Young and Kirby were in possession of all of this inside information about IDS operations before they "accepted" the exchange offer which in fact had already expired.

During the period January through April 1950, the price of IDS Class A in over-the-counter transactions began to rise materially from around $6.50 per share in January to over $12 late in April (Ex. 124, Rep. 58). The market remained extremely thin however, with only small quantities of stock being offered even at the higher prices (Rep. 63).

The Stockholders' Misinformation

On April 6, 1950, Alleghany mailed to its common stockholders a notice of annual meeting and proxy statement (Ex. 30), setting forth the December 6, 1949 resolution of the Board of Directors and soliciting proxies for the ratification of proposed exchange transaction with the officers. This proxy statement purported to furnish the stockholders with sufficient information upon which to decide whether it was in their interest to ratify the resolution. The resolution itself contained a statement by the Board of Directors that the transaction was "desirable" from Alleghany's standpoint. No mention was made to stockholders, however, of the fact that the directors' resolution presented for approval had been adopted by a board of directors a majority of which were self-interested (Ex. 27).

The proxy statement stated that the current bid and asked quotations for IDS Class A stock were $9—9.75. It gave no information whatever about IDS earnings and of course made no mention of the facts with respect to the

[fol. 2177] spectacular impending 1950 mortgage profits as reported by Purcell to Young and Kirby on February 11, 1950. The proxy statement stated that the officers had accepted the exchange offer on January 20, 1950 at a time when the market price was below Alleghany's cost and that therefore they would pay Alleghany its cost on the shares ($8.1453) instead of market price. This was false, both as to the alleged date of acceptance of the offer, and the market price of the stock on the date of acceptance. Actually, the "acceptances" were not made until at least a month later and were backdated by Purcell to January 20 (Ex. 331). During this interim, the price on IDS Class A was continually rising. In addition, the assertion that market was below cost on January 20th was wholly without basis in fact. There was no market on January 20th. Although $6.50 was bid, no stock whatever was offered at that or any other price (Rep. 57, Ex. 124).

In addition, the April 6th proxy statement failed to inform the shareholders that Purcell was interested in the transaction. Instead, it falsely stated that, pursuant to contract with Alleghany of January 20th, 1950, Purcell had been using his best efforts to acquire IDS Class A on the open market. The proxy statement did not inform the stockholders that in December of 1949 Purcell had withdrawn from the market on Young's private promise to him that he would receive part of Young and Kirby's shares on the exchange (Young 2742).

The April 6 proxy statement also represented to Alleghany's stockholders that Young and Kirby as officers of Alleghany devoted a substantial amount of their time and effort to the management of IDS and that the exchange was being made, in part, to compensate them for this time and effort. This false statement was added to comply with a request of the SEC that the shareholders be told what business reason *if any* Alleghany had for giving the IDS stock to Young and Kirby (Ex. 337). In fact, Young, by

[fol. 2178] his own admission, devoted no substantial time or effort to the affairs of IDS and Kirby none at all (Ex. 4, pp. 51, 52, 58; Young 2803, 2821).

On April 26, 1950, Alleghany mailed a supplemental proxy statement to its stockholders (Ex. 32) containing further information with respect to the exchange. While this proxy statement disclosed the fact that Purcell was to receive shares on the exchange, it did not inform the stockholders that Purcell had been assured of an interest in the transaction back in December when he voted for it as a director of Alleghany. Instead, it repeated the false statement that Purcell had been exercising his best efforts to purchase the stock on the open market pursuant to agreement with Alleghany.

At the time this second proxy statement was issued, the IDS Class A stock to be given to the officers for $8 had already reached $12 per share (Ex. 124, Rep. 58). No mention of this fact was made to the stockholders.

The Stockholders' Ratification

On May 3, 1950, Alleghany held its annual meeting. At that meeting, there was some expression of distrust of the exchange transaction by the stockholders in view of the fact that the officers were getting stock for $8 which was then being quoted at over $12. Purcell reassured the stockholders as to the fairness of the transaction by falsely telling them that Young and Kirby had accepted the offer on January 20, 1950, at a time when the shares could be bought on the open market for only $6.50 (Ex. 339, pp. 41, 63). (It will be remembered, of course, that Purcell himself had prepared the acceptances of Young and Kirby late in February or early in March of 1950.)

The stockholders then proceeded to ratify the transaction, and on May 15, 1950, the exchange was consummated with Young and Kirby each receiving approximately 24,000 shares of IDS Class A at Alleghany's original cost of $8.145

[fol. 2179] per share (Rep. 46). Anzalone also received 100 shares at that price. Thereafter, Young and Kirby each sold 6,000 shares of their IDS Class A shares to Purcell at their cost (Young 2327).

During 1950, IDS' increased income from mortgage operations, as predicted by Purcell to Young and Kirby late in 1949 and early in 1950, began to be reflected in its reported earnings. By June 30, 1950, the Class A shares taken by the officers for $8 in May of 1950 had already earned $9.70 per share! Each share earned an additional $12.46 in the second half of 1950, making a total of over $22 per share earnings for that year (Ex. 97 Rep. 52, 54)!

Thereafter, the extreme leverage which Alleghany's management originally foresaw in the IDS situation began to operate in IDS' favor, and the profits mushroomed as envisioned back in the spring of 1949. By the end of 1951, the $8 Class A shares taken by Young and Kirby were selling for $37; by the end of 1952, $89; by the end of 1953, $100; and in 1954, when this action was instituted (after a five for one split), $400 (Ex. 124). As of January 9, 1959 the price is $1005.*

Conclusions from the Facts

We submit that no reading of the record permits any conclusions other than these:

A. The exchange resolution was adopted by a self-interested board of directors and was, therefore, voidable and subject to the most minute judicial scrutiny for fairness and disclosure.

B. The exchange transaction was so unfair as to be unsusceptible of ratification by a majority of shareholders.

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* This price is based on market quotations obtained from brokers by counsel for objectant.

[fol. 2180]

C. The offer of exchange had already expired and was not in existence at the time it was "accepted".

D. The defendants had a special inside knowledge, not shared with the stockholders, of the affairs of IDS and consequently of the value of its stock at the time they made the exchange. Particularly, they knew that IDS had booked new mortgage business in 1949 which would raise IDS 1950 income to over $6,000,000 in 1950 or almost five times that of 1949.

E. The proxy material failed to provide stockholders with sufficient information upon which to make a determination with respect to the exchange and did not put them on an equal footing with their fiduciaries.

F. False information was furnished to shareholders with respect to several material aspects of the exchange, both in the proxy material and orally at the meeting of stockholders.

The Referee's Errors

The Referee's conclusion from the facts set forth above that defendants did no wrong rests upon the following major errors of fact and law:

The Self-Dealing

The Referee conceded that a majority of the board at the December 6, 1949 meeting was self-interested but treated this problem as being merely the technical one of whether there was a sufficient quorum at the meeting (Rep. 58). Finding that under Alleghany's charter, votes of interested directors could be counted in determining the existence of a quorum, the Referee concluded that there was no legal significance in the self-interest of a majority of the Board on December 6, 1949 in authorizing the exchange (Rep. 58).

[fol. 2181] In so doing he overlooked the established law that such a self-interested transaction is subject to the most minute judicial scrutiny and is voidable if shown to be unfair or the result of overreaching or the use of inside information; that the charter provision could not change this rule [*Everett* v. *Phillips,* 261 App. Div. 1082 (2d Dept. 1941), affd. 288 N. Y. 227 (1942)]. However the Referee gave the directors the benefit of every possible inference, ignored the clear evidence of their wrongdoing, and judged defendants' non-disclosures as if the transaction had been one at arms-length. He even found as a fact that the self-interest of the majority of Alleghany's directors had been "fully revealed" to the stockholders in the proxy solicitation (Rep. 58, 59). This is not the fact.

No mention whatever was made to the stockholders in the proxy solicitations that a self-interested majority of directors had adopted the exchange resolution presented for their ratification. The stockholders were told only that the board of directors had adopted the exchange resolution (which was set forth) at their December 6, 1949 meeting, and that the exchange was with three officers (Ex. 30, pp. 6, 7). The board's resolution represented the transaction as being advantageous and "desirable" from Alleghany's standpoint (Ex. 30, p. 6).

Since Alleghany's board of directors consisted of ten members (Ex. 30, p. 2) and only three officers were mentioned as participating in the exchange, the stockholders had every right to assume that the resolution of their board represented the considered judgment and discretion of a disinterested majority of directors dealing at arms-length with the officers; and to give the board's finding of desirability great weight in reaching their own conclusions. The stockholders were not told that only seven directors were present at the December 6 meeting and that four of the seven were self-interested. They would have viewed the resolution in a very different light had they known that

[fol. 2182] it was made by the very persons to whom the IDS stock was being offered.

The Unfairness of the $8 Price

Nowhere in the Referee's report is there any express finding with respect to whether the defendants met the burden of establishing the fairness of their self-dealing.

Defendants argued that the terms of the transaction were eminently fair since the IDS was to be valued at cost or market, whichever was higher. But the cost to Alleghany was not the $8 defendants paid. Alleghany had bought the A shares at $8 as part of an overall investment in IDS in which it had also paid $20 a share for voting shares in order to institute new management and improve IDS (see *supra*, pp. 8, 9). Indeed, Young himself had pointed out, the year before, that the IDS non-voting stock at $8 would be the more advantageous purchase for Alleghany were it not for the problem of management, since the non-voting stock shared equally in earnings and assets with the voting (Ex. 317). After causing Alleghany to pay $1 million for control and to assume the burden of management, defendants then took the cream of the investment for themselves without reimbursing Alleghany for the million dollar bonus. On this point the Referee is silent.

With respect, however, to the fairness of the market price of IDS as a basis for the exchange, the Referee in effect conclusively determined that the transaction was unfair to Alleghany. In discussing whether the defendants could have purchased IDS Class A stock on the open market at prices comparable to the price at which they were taking it from Alleghany, he stated:

> "It is my conclusion that the market in IDS during the period in question was so thin as to make these hypothetical purchases altogether unlikely. Any such purchases, to my mind, would have sent the price up materially" (Rep. 63).

[fol. 2183] Thus the Referee determined that Alleghany's officers and directors took property from it at a price substantially lower than the price they would have to pay for it at arms-length to strangers on the open market. This we submit is patently unfair.

But the above elements of unfairness are dwarfed by the fact that Young, Kirby and Purcell knew of the impending bonanza in IDS before they risked a dollar on the transaction and long before the stockholders had any inkling of what was coming. Young, Kirby and Purcell were aware of the $5 million earnings increase for 1950 and the other substantial improvements for 1950 reported by Purcell to Young and Kirby in his letter of February 11, 1950. They knew that the true value of IDS Class A was far above either its original cost or its then market price. Defendants knew these facts. Nobody else did. It seems pointless to judge the fairness of the transaction on the basis of "cost or market" when the fact is that defendants knowingly took IDS Class A stock worth five times as much as Alleghany's stockholders had any reason to believe. This brings us to the question of defendants' use of their inside position to gain advantage over the stockholders to whom they owed their trust.

The Inside Knowledge

Although acknowledging that defendants had knowledge of the monthly earnings of IDS for the last quarter of 1949 and the first quarter of 1950 and of the substantial increases in earnings for those quarters (Rep. 51-54), the Referee determined that defendants had no indication that these increases represented any steady trend, in view of the fact that in the two months of December 1949 and January 1950, IDS had shown losses (Rep. 52, 53). Nor could he find that defendants had reason to expect the very substantial earnings of February and March 1950 to continue both in size and in rate to what the Referee conceded to be the

[fol. 2184] "spectaular" increase in earnings *after* March of 1950 (Rep. 54).

The Referee's analysis of these earnings figures is clearly erroneous in several respects.* It should not be allowed to obscure the very plain fact that the earnings in the last quarter of 1949 ($474,422—$1.63 per share) and the first quarter of 1950 ($639,040—$2.20 per share) were increasing by leaps and bounds over the previous earnings record of IDS. But rather than dwell at length on such erroneous interpretations of obvious facts, we proceed to the issue tendered by the Referee (Rep. 53-4)—and to the evidence that he totally ignored.

The Issue as Posed by the Referee:

Did the defendants have reason to believe that the recent IDS earnings figures in the last quarter of 1949 and first quarter of 1950 indicated a "spectacular" earning trend for 1950 over and above what any shareholder had any reason to expect?

The Evidence Ignored by the Referee:

Exhibit 97 which is a quarterly analysis of IDS profit and loss by Departments for 1949, 1950 makes it clear that the spectacular $5 million swelling in IDS income for 1950

* For example: (a) The Referee took the average monthly earnings of the first quarter of 1950 weighted down by the January certificate accrual loss and compared that figure ($213,000) with November earnings figure of $370,000 unweighted by any December certificate accrual loss; (b) the Referee found that the 35% increase in the first quarter 1950 over the last quarter 1949 was "much less" than the increase of the whole year 1949 over the whole year 1948. In fact, IDS had substantial quarterly earnings of over $474,000 ($2.20 a share) in the last quarter of 1949, and a 35% increase over that for the first quarter 1950 would have been very meaningful in terms of dollars and cents to stockholders. IDS had only slight earnings in 1948 (Ex. 17). Under such an erroneous comparison, the 1949 earnings were, of course, many times more than in 1948.

[fol. 2185] arose almost entirely from "Commissions and Participation Project Fees" arising from FHA and VA mortgages. This is dramatically illustrated by comparing the following items taken from Exhibit 97:

Quarter	Mtge. Dept. Gross Commissions and Project Fees	Total Mtge. Dept. Net-Income	Total IDS Net Income
1st 1949	$ 292,942	$ (27,376)	$ (1298)
2nd 1949	501,484	55,344	482,249
3rd 1949	767,313	670,759	410,112
4th 1949	863,074	611,999	474,422
Total 1949	$2,424,813	$1,310,726	$1,365,485
1st 1950	$1,225,591	$ 955,248	$ 639,040
2nd 1950	1,450,830	1,415,395	2,192,519
3rd 1950	1,284,045	1,473,607	1,512,670
4th 1950	2,935,804	2,921,872	2,110,182
Total 1950	$6,946,270	$6,766,122	$6,454,411

As seen above, these mortgage department earnings began to increase all during 1949 and 1950, producing in the latter year the $5,000,000 increase over 1949.

Did the defendants have reason to believe late in 1949 or early in 1950 when they took the IDS Class A stock that these substantial earnings would continue and in fact spectacularly increase? Exhibit 327 conclusively establishes that they did. It is a personal letter from Purcell to Young and Kirby dated February 11, 1950, which stated:

> "The Mortgage Department operations promise to show continued substantial earnings. During 1949 the department funded $153,000,000 of new loans, of which $107,000,000 were sold to others. At year end $125,000,000 of new loans were committed to be funded in

[fol. 2186] 1950. Gross income from market [sic]* operations was $4,487,000 (not including interest), leaving net income before home office expense of $2,277,000. As a result of the transactions the over-all interest rate on permanent portfolio mortgages was increased from 4.336% to 4.469%, and if construction loans are included, the over-all interest rate was increased from 4.361% to 4.629%, resulting in approximately $500,000 additional annual interest collected.

"During 1950 the Mortgage Department forecasts, conservatively, $8,315,000 gross income from mortgage operations (not including interest), with a net, before home office expenses, of $5,720,000. I am told that these are very conservative estimates and take into account only business which is presently on the books.

"As you know, the principal operations involve planning and working with contractors in the construction of large, low-cost housing projects, where FHA and VA commitments are worked out in advance. The gross income comes from fees of various kinds in connection with this work."

The reason Purcell was able early in February 1950 to predict with uncanny accuracy the extra five million in mortgage department earnings of IDS for the entire year 1950 was because those earnings flowed from mortgage business which was then "presently on the books" of IDS in 1949. Young and Kirby therefore did not have a mere "hope" for improvement or a reason to take an "optimistic

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* The word obviously should be "mortgage". Among other information reported by Purcell was: (i) a substantial increase in sales of IDS funds shares and certificates; (ii) a substantial increase in the *net rate* of IDS interest (interest earned less interest paid); (iii) a ½ million dollar increase in mortgage interest income; (iv) a major reduction in home office overhead expense.

[fol. 2187] view" (Rep. 54). They *knew* in February 1950* the exact nature, source and amount of the very earnings which caused the subsequent spectacular increase in the value of the IDS Class A shares. But the Referee's Report does not even mention Exhibit 327.

Exhibit 327 thus completely explodes the tortured analysis (Rep. 51-55) by which the Referee convinced himself that, although defendants had reason for cautious optimism, they did not foresee the "spectacular" IDS earnings for the year 1950.

Having thus made clear the existence and extent of defendants' inside knowledge, let us see how that compared with what they told the stockholders of Alleghany; first outlining, however, the applicable law.

The Alleged Defense of Shareholder Ratification

In discussing the alleged ratification by the shareholders, the Referee gave no consideration to the two questions of law involved, which are:

1. Can a transaction, as unfair as the 1950 IDS exchange, be cured by a ratification by a majority of shareholders?

2. Assuming for purposes of argument that it can, what is the measure of the fiduciaries' duty of disclosure to the shareholders in obtaining such ratification?

It has long been the rule in New York and elsewhere that the taking of corporate assets by fiduciaries for themselves at substantially less than fair market value constitutes a

* From the tone of Exhibit 327 one gets the distinct impression that the facts therein were already known to Young & Kirby and were merely being summarized for them. This opinion is supported by Ex. 325 another letter from Purcell to Young which referred to substantial 1949 and 1950 profits of the mortgage department and to substantial increases in share and certificate sales. Exhibit 325 is dated *January* 20, 1950.

[fol. 2188] fraud on the corporation and an illegal misappropriation of its assets which cannot be ratified by any mere majority of the shareholders. As the Court of Appeals said in *Pollitz* v. *Wabash,* 207 N. Y. 113, 127 (1912):

> "The direct or indirect misappropriation of assets of the corporation to his own use or benefit by an officer is incapable of being authorized or ratified by a vote or any act or omission of the majority of the stockholders. Continental Securities Co. v. Belmont, 206 N. Y. 7, 99 N. E. 138; Von Arnim v. American Tube Works, 188 Mass. 515, 74 N. E. 680; Russel v. Patterson Co., 232 Pa. 113, 81 Atl. 136, 36 L. R. A. (N. S.) 199."

The divergence between the real value of IDS Class A in April of 1950 and the $8 price paid by the defendants is so great as to eliminate any possible question of discretion or judgment. On the Record it constituted a fraudulent misappropriation of corporate assets by the fiduciaries which could not have been ratified by anything less than a unanimous vote of the shareholders even if a complete disclosure of the facts had been made.

Assuming, however, that the matter was one upon which a majority of shareholders was entitled to exercise its judgment, if proper disclosure had been timely made, we now examine the nature of the information supplied to the shareholders of Alleghany by their fiduciaries for that purpose.

The Referee found that the failure to provide Alleghany's stockholders with information—

> "* * * was not calculated to and did not mislead them and was not due to any fraud or deception practiced by the defendants (Rep. 53).

By characterizing the problem of disclosure to shareholders as being one of "fraud" and "deception" and de-

[fol. 2189] ciding the claim on that basis, the Referee committed serious error.

The arms-length rules of fraud and deceit have no application to dealings where fiduciaries are seeking to foreclose forever their *cestuis* from questioning self dealing transactions in trust property. In such cases the burden is upon the fiduciaries to disclose *at their peril* all information known to them which might reasonably affect the determination of the *cestui*. In *Winkelman* v. *General Motors Corp.*, 44 F. Supp. 960, 969 (S. D. N. Y. 1942) Judge Leibell rendered a classic statement of this rule. He stated:

> "The duty of full and frank disclosure of all pertinent facts affecting a transaction of this magnitude, where directors and officers have a personal interest opposed to that of the corporation is predicated upon moral considerations. Where directors seek the approval of the stockholders for a transaction in which the directors stand to profit at the expense of the corporation, every item of possible profit to the directors and all information that would enable the stockholders to form a correct estimate of the benefit accruing to the directors must be disclosed, if the approval of the stockholders is to be any protection to the directors."

Clearly the proxy statement sent to the stockholders did not meet this test.

The Nondisclosures and Misinformation

The Value of IDS:

The only information it furnished on the value of the IDS shares was the March 31, 1950 quotation of the stock on the over the counter market ($9) (Ex. 30, p. 7). Against this price the $8.145 to be paid by defendants appeared quite reasonable; particularly in the light of the representation in the proxy solicitation that defendants had ac-

[fol. 2190] cepted the offer on January 20, 1950 when the market was below $8 (Ex. 30, p. 7).

But, the value of a stock often depends upon factors other than its "market" price. Where the stock is not listed and the market in it is thin the bid and asked quotations may be of less significance in determining its true worth than other factors, such as its investment value, based on its earnings record, current earnings, or earnings prospects; *Diston* v. *Loucks,* 62 N. Y. S. 2d 138 (Sup. N. Y. (1941)). Such was the case with IDS Class A stock. Indeed the Referee concedes that the market was extremely thin and did not reflect the real value of the shares the defendants were taking (Rep. 63).

Defendants were intimately familiar with the past and current earnings of IDS and they had very definite information as to the spectacular earnings for 1950 (Rep. 51, 54; Exs. 325, 327) which indicated that the stock was worth many times the current market. Defendants based their decision on that information. Yet they gave the stockholders only the market prices and kept the information as to 1950 earnings to themselves.

Conceding that IDS earnings information was of vital importance in judging the exchange and that no such information was included in the proxy statement, the Referee looked beyond the proxy statement. Discovering some information about IDS 1949 earnings in Alleghany's 1949 annual report (Rep. 50, 51), he proceeded to a finding of adequate disclosure by defendants even though the information he relied on was not in the proxy statement. He justifies his retrospective expansion of the proxy statement by stating:

> "[T]he April 6th, 1950 proxy statement . . . expressly referred the stockholders to the annual report" (Rep. 50, 51).

[fol. 2191] One might thus infer that defendants had advised the stockholders to consult the annual report for further information on the value of IDS Class A shares. This is not so. Nowhere in the proxy statement were the stockholders referred to the annual report. The only reference to the annual report in the proxy statement was the standard clause required by the SEC stating that the annual report had been mailed (Ex. 30, p. 1).

Whether under the circumstances such a casual and disconnected mention of the annual report could now foreclose stockholders and grant immunity to their errant fiduciaries with respect to such an important transaction might pose an interesting legal question, if the annual report met the test of adequate disclosure required. The question, however, is moot, since it did not.

Indeed, the annual report was itself false and misleading. It set forth the 1948 and 1949 annual earnings of IDS coupled with the following statement:

> "Alleghany Corporation regards its interest in IDS as a long-term investment. Because of cash requirements of maturing IDS certificates, we do not expect any return on our investment in IDS for a number of years. The outlook for eventual profits is considered to be unusually promising" (Ex. 17, p. 6).

The Referee exculpated the defendants on the issue of disclosure by relying almost entirely on the above statement that the outlook for "eventual" profits was unusually "promising". We submit it may not be construed as an equivalent to the knowledge of Kirby, Young and Purcell that the IDS earnings in the two most recent quarters on this $8 stock had been almost $4 a share and that IDS had already booked an additional $5 million in net earnings ($22 a share) for 1950. With all due respect to the Referee we think any stockholder of Alleghany would have been

[fol. 2192] happy to trade his copy of the 1949 annual report for a friendly letter from Purcell (Ex. 327).

But whatever vague and cautious optimism the statement in the annual report may have imparted to the stockholders was more than wiped away by the falsehood that accompanied it. For to tell the stockholders on March 25, 1950 that Alleghany's investment in IDS was to be "a long term" one, when at the time (but as yet unknown to the stockholders) the cream of that investment had already been offered *by* the officers *to* the officers is, we think, something less than the candor which Judge Leibell had in mind in the *Winkelman* case.

Defendants solicited proxies for the exchange, telling the stockholders nothing about specific facts they knew concerning recent IDS' spectacular and imminently prospective earnings. They cannot now take refuge in a vague "promise" about "eventual" earnings which was not even in the proxy solicitation and which was itself accompanied by a misstatement about Alleghany's plans to keep its IDS stock.

Defendants' Failure to Make Timely Acceptance

The question of when defendants legally committed themselves to the exchange is of vital importance. The record is absolutely clear that as late as February 22nd, 1950, neither Young nor Kirby (who took almost all the IDS Class A on the exchange) still had not legally committed themselves to the transaction and that the tenders whereby they purported to accept the exchange offer were backdated to January 20th by Purcell (Ex. 331). This raises two major defects in the transaction:

1. The offer had expired on January 20th. There was no offer outstanding thereafter and the officers were certainly without any power of acceptance after February 22, 1950 when they did "accept."

[fol. 2193] 2. The stockholders were falsely told that the officers had made a timely acceptance on January 20th, 1950, when the market was below cost. Despite the rising market during the critical first quarter of 1950, the stockholders may very well have been inclined to permit the officers to take the stock—worth $12 in April—if they thought that the officers had accepted months before, when the market was down.

The Referee disposed of both these problems by accepting as "plausible and credible" the testimony of Young (the chief conspirator) that he and Kirby were committed to make the exchange at the board meeting of December 6, 1949 when the offer was made to the officers (Rep. 60, 61). The Referee stated that he found support for such a commitment in the record of the December 6 meeting (Ex. 27).

One can search the record of that meeting (Ex. 27 M) from top to bottom without finding the slightest mention of any obligation on the part of any of the defendants to accept the exchange offer. Just where in that document the Referee found support for his finding is still beyond our understanding.

Young's subsequent invention at the hearings of a "moral" commitment (Young 2327) as of December 6, 1949 can be judged only in the light of his desire to keep his enormous profits. Young's story is contradicted by the contemporaneous statements of Purcell at the stockholders meeting in May of 1950, when in reply to questions about why the stock was being given to the officers at $8 when it was selling on the open market for $12, he repeated the false statement of a tender on January 20, 1950 (Ex. 339, pp. 41, 63) and never once mentioned any commitment by Young and Kirby at the December 6, 1949 meeting although he was present at that meeting and would have been the first to recall such a commitment in order to justify the transaction to the stockholders. Young's testimony is given

[fol. 2194] the lie by still another contemporaneous document—the draft of the proxy statement (Ex. 334, Rider "F" p. 9) which showed date of tender as *February 20th*, 1950. This was later thoughtfully changed to *January 20th* in the copy the stockholders received (Ex. 30, pp. 7, 8).

Young's testimony and the Referee's finding on this point may best be judged in this perspective: Had Purcell's letters of January 20 and February 11, 1950 (Exs. 325, 327) contained the gloomy news that sales were off, interest income was down, that new mortgage business failed to materialize and that the whole IDS investment was teetering because certificate reserves could just not be met on present or prospective income, could Young and Kirby have been compelled to go through with the exchange on the basis of what had transpired at the meeting of December 6, 1949?

The False Statement of "Substantial" Services

Passing on to still other misstatements leading to the stockholders' ratification, we turn to the representation in the proxy statement that defendants Young and Kirby were "devoting a substantial amount of their time" to the management of the affairs of IDS, and that they would continue to devote such time and effort to those activities under an even greater incentive if the exchange were consummated (Ex. 30, p. 7). This representation was material, having been inserted only upon the insistance of the SEC that the stockholders be informed of what services, *if any*, Young and Kirby were rendering for IDS (Ex. 337). In purported compliance with this request, defendants falsely told the stockholders that Young and Kirby did and would devote a "substantial amount of their time" to the affairs of IDS and thereby led the shareholders to believe that Alleghany was at least in part being compensated for the IDS exchange by the substantial services of Young and

[fol. 2195] Kirby. However, the undisputed proof in the record is the admission by Young (Ex. 4, pp. 51, 52) that neither he nor Kirby devoted any substantial time to the IDS enterprise either before or after the exchange.

In treating this question, the Referee ignored this false representation and merely discussed the question of whether Young and Kirby were required to devote any particular amount of time to IDS in order to earn the stock they were getting. But the question is not whether they had to spend time working in order to be entitled to the stock, it is simply whether they could truthfully tell the stockholders they were working when by their own admission they were not.

We trust that notwithstanding this sidestepping of the issue in the Report this Court will recognize that the statement with respect to substantial services was undoubtedly material and admittedly false.

Failure to Disclose Young's Deal With Purcell

Another matter reflecting upon the character of the 1950 IDS transaction, but deemed by both defendants and the Referee to be unnecessary to disclose to the stockholders, was the relationship between Purcell's attempts to get himself some IDS Class A stock on the open market and Young's idea of taking the stock out of Alleghany's portfolio.

Under the letter agreement of August 1949 (Ex. 390), Purcell had been attempting to acquire substantial quantities of IDS stock (up to 25,000 shares) on the open market. He could not do so. Because of the thinness of the market, he was not able to purchase any substantial quantities. In December 1949, Young told Purcell to withdraw from the market and stop trying to buy stock under the previous arrangement and that Young and Kirby would

[fol. 2196] each give him 6,000 shares of the stock they might take under the Exchange offer (Young 2742).

The Referee found that Young was not thus attempting to "artificially depress the market" because Purcell continued to buy shares from December 1949 to February of 1950. The Referee made no mention of the fact that the quantity of the shares purchased by Purcell after December 1949 was trifling (Ex. 422) and that he purchased those shares only if he could get them cheaper than the $8 exchange price (Purcell 4018). It is submitted that Young's intention to keep the market price down is not subject to dispute.

However, aside from the question of whether Purcell's withdrawal depressed the market, there is no question but that the stockholders had been falsely informed in the proxy statement of April 6, 1950 that under the contract of January 20, 1950, Purcell had been trying to buy stock on the open market. Even the second proxy statement of April 26th which finally disclosed that Purcell was to get some of Young's and Kirby's stock, never mentioned that this arrangement dated back to December 1949. Instead, the attempt was made to have the shareholders believe that the Young-Kirby-Purcell arrangement was one of very recent origin (Ex. 32). It is submitted that defendants' attempts to conceal Purcell's true position with respect to the exchange had material consequences none of which was considered by the Referee.

Failure to Disclose the Rise in the Market Price of IDS

Finally, we refer to defendants' nondisclosure of the fact that in April of 1950, the stock of IDS had reached $12 (Rep. 58). Although the defendants mailed a supplemental proxy statement on April 26 (Ex. 32), they never bothered to mention this fact but instead permitted stock-

[fol. 2197] holders to continue to rely on the information in the April 6, 1950 proxy statement that the stock of IDS was worth about $8 or $9. This intervening 50% rise in the market price of IDS over the price at which the defendants were to buy it from Alleghany was material information concerning "built in" profits to fiduciaries which defendants as directors, and particularly as self dealing directors, were honor bound and legally bound to disclose in the April 26, 1950 proxy solicitation.

But the Referee concluded otherwise. He felt that the directors were under no duty of disclosure since:

> "After all, the market price of IDS was not a secret" (Rep. 58).

One might get the impression that defendants were not dealing with the stockholders of Alleghany to whom they owed the greatest duty of loyalty and trust, but rather that they were bargaining at arms length with shrewd financial speculators who were to be expected to keep currently abreast of the day to day over-the-counter market developments in the price of the Class A stock of a Minnesota investment company not listed on any exchange. Apparently, when Alleghany directors deal with their stockholders, the stockholders should know that it is every man for himself, and that they will be charged with detailed knowledge of any facts which are "not a secret."

We submit that the Referee's conclusion that the fiduciaries could keep silent in their own self interest is wholly inconsistent with the moral policy and law of this state which, in cases such as these, is not satisfied with self interested silence but requires directors to speak up and warn of inequities and profits to themselves. See opinion of Cardozo, *J.* in *Globe Woolen Co.* v. *Utica Gas & Electric Co.*, 224 N. Y. 483, 489 (1918), and of Judge Leibell in the *Winkelman* decision to which we have heretofore referred.

[fol. 2198] *The Defense of Laches*

The Referee was considerably impressed with the possibility that the instant claim could be defeated by a defense of laches. He stated:

> "While it is unnecessary for me to decide the point, it would seem to be at least arguable that Alleghany's annual reports for 1950, 1951 and 1952 (Exhibits 18, 19 and 20), which fully revealed the drastic increase in the earnings of IDS, gave to the stockholders of Alleghany all the information which was allegedly withheld from them in April, 1950. Nevertheless, the present actions were not brought until 1954, at which time the market price of IDS had risen to about $200 per share.
>
> "Under the circumstances, the defense of laches would appear to have considerable merit and should properly be taken into account in considering the fairness of the settlement" (Rep. 55-6).

The short answer to this argument is that the cause of action is governed by an appropriate statute of limitations within which the instant action was timely commenced, and the rule has long been that laches is not available as a defense in a derivative action brought within the applicable statutory period. *Goldberg* v. *Berry,* 231 App. Div. 165, 247 N. Y. Supp. 69, 75 (1st Dept. 1930); *Gross* v. *Price,* 128 N. Y. S. 2d 209 (Sup. Ct. Nassau 1953).

However, there is nothing in the record on which to base a defense of laches. Defendants would first have had to show that stockholders had earlier learned of defendants' misconduct. No such showing was made.

Rescission and Its Present Value

If the instant cause of action were set down for immediate trial and tried to judgment on the merits based upon the evidence already adduced, we have no doubt that a court would order rescission of the 1950 IDS exchange.

[fol. 2199] The net value to Alleghany of a complete rescission at current market prices (Jan. 9, 1959) is $47,183,455.*

Allowing a credit to defendant Young for certain IDS Class A shares sold by him in 1953 and taking instead, the profit he made on that sale, the net value to Alleghany of rescission at current market prices would be $39,056,838.*

Indeed, even if we were to indulge in the erroneous evaluation of General Counsel for plaintiffs who for some undisclosed reason completely excludes from his calculations the shares wrongfully taken by Purcell, as well as those sold by Young in 1953, Alleghany would still be benefited by a decree for rescission by $27,289,937, based on current market prices.*

Lest the defendants accuse us of hindsight in evaluating this claim, we do not contend that the defendants foresaw in 1950 that the IDS Class A would now be selling for over $1,000 a share, although the record is clear that they were aware of its tremendous speculative potential from the outset. We do contend, however, that they knew that it was worth many times what they were paying Alleghany for it and that they kept that information from Alleghany's stockholders. Under such circumstances, the law is clear that they hold the IDS shares as a trust *res* which must be returned to Alleghany, "however enhanced in value" it may now be. *Marcus* v. *Otis,* 168 F. 2d 649 (2d Cir. 1948) at p. 654.

The Effects on Alleghany of the Compaign to Control New York Central

Three of the causes of action (Second, Third and Fourth) in the consolidated amended complaint relate to various aspects of the campaign by which defendants Young and

* For basis of computation, see Appendix B (A).

[fol. 2200] Kirby, with the assistance of the defendants Murchison and Richardson, gained control of the New York Central Railroad. They cover the following claims:

1. The purchases by Young and Kirby of 200,000 shares of New York Central stock in December, 1953 and January, 1954 (Rep. 68-73).

2. The sale by Alleghany of its controlling stock in the Chesapeake & Ohio Railroad in order to enable Young and Kirby to obtain control of the New York Central (Rep. 66-68).

3. The use of Alleghany's assets to finance the acquisition by Murchison and Richardson of 800,000 shares of the New York Central stock (Rep. 73-87).

4. The use of Alleghany's assets to finance the proxy fight for control of New York Central (Rep. 87).

5. The purchase by Alleghany of 135,000 shares of New York Central from the Murchisons at a profit to the latter of $675,000 pursuant to an option granted on December 13, 1954 (Rep. 88-89).

6. The transfer of control of IDS to the Murchisons through sales and exchanges of stock in 1953, 1954 and 1955 (Rep. 64-66, 89-96).

The Facts

Preparation for the Campaign

The campaign began in early December, 1953, when Messrs. Young and Kirby decided that the time had come for them to obtain control of the management of the New York Central. As a first step Young and Kirby proceeded quietly to acquire 100,000 shares of Central stock for each, and also undertook to eliminate any legal obstacles to the

[fol. 2201] forthcoming campaign by disposing of Alleghany's historic control of the Chesapeake & Ohio Railroad (Young 3045-49).

Coincidentally, Young began the process of transferring to the Murchison interests Alleghany's long term investment in IDS. On December 30, 1953 Alleghany sold to Murchison Brothers 5,650 shares of Class A stock and 27,000 shares of common stock in IDS, representing approximately 24% of the voting stock of IDS (Ex. 122, Ex. 21, p. 14). The entire price was to be paid over a five-year period (Ex. 21, Annual Report to Stockholders of Alleghany Corporation).

By January 19, 1954 when the Young-Kirby purchases of Central had been completed, and Mr. Young had arranged for Cyrus S. Eaton to purchase Alleghany's 104,000 shares of C. & O. stock (Ex. 384), Young and Kirby decided to let their fellow directors know about the future they had mapped out for Alleghany. At a board meeting held that day, Young for the first time told his fellow directors what he and Kirby had been doing for the past month (Young 3093), and obtained authority to consummate the agreement with Eaton (Ex. 118). Young told his fellow directors that it would be risky for Alleghany to purchase his and Kirby's 200,000 shares at cost; but, at the same time, he joined in authorizing the purchase by Alleghany of 100,000 shares at the market (Ex. 384, Young 2342-49). However, following the purchase of 200,000 shares, the market price rose, and Alleghany was able to purchase only some 11,000 shares at the time (Young 2388).

On February 10, 1954, the controlling interests of New York Central denied the Young-Kirby requests for two seats on the Board and it became apparent that a proxy contest was forthcoming (Exs. 171, 127). Interest focused on the 800,000 shares of common stock of Central held by the C. & O., the largest single block of stock outstanding (Ex. 166). On February 12th, Young obtained from Alle-

[fol. 2202] ghany's Executive Committee authorization to invest up to $5,000,000 in a syndicate to purchase the 800,000 shares of Central stock owned by the C. & O. (Ex. 128).

Young had reason to fear that the Interstate Commerce Commission would frown upon Alleghany's attempting to vote any part of these 800,000 shares immediately after it had sold its controlling stock in the C. & O. (Young 3100-02). But the same fortune which brought Cyrus Eaton to the fore now produced on the scene two sympathetic purchasers—defendants Clint Murchison and Sidney Richardson. After Young had pointed out to Murchison the benefits which would flow from a change in management of the New York Central (Ex. 4, pp. 193-4), Murchison and Richardson purchased the entire 800,000 shares of the C. & O. at a price of $25 a share. They did not, however, have to put down $20,000,000 for the stock (Ex. 219). Rather, on February 22, 1954, Alleghany advanced for them a down payment of $2.500,000, and when further payment was due on March 15, 1954, Alleghany advanced an additional $5,000,000. Kirby lent Richardson five million dollars. In return for these advances, Alleghany received notes from Murchison and Richardson bearing 4½% interest (Exs. 137, 138).

The March 15th "Puts"

Apparently Messrs. Murchison and Richardson did not regard their investment in Central as a long-term one, because, at the same time the money was advanced and the notes were given, they obtained from Alleghany and from Kirby options to "put" the stock to Alleghany and Kirby at their original cost price of $25 a share (Exs. 139, 140, 141). Murchison and Richardson were given identical options with respect to 100,000 shares apiece; these provided that, in the event they were exercised, the shares purchased by Alleghany would be placed in joint ventures, the terms of which were set forth in a form of joint venture agreement attached to the options. In one of these joint ventures Alleghany and Murchison would have 100,000 shares

[fol. 2203] each, and in the other Alleghany and Richardson would have 100,000 shares each, and in both the profits and losses would be shared equally. At the same time, for their further protection, Murchison was given an unconditional put which required Alleghany to purchase from him 200,000 shares at his original cost of $25 a share, and Richardson received the same put from Kirby.

Thus, of the 800,000 shares "purchased" by them for $20,000,000, Murchison and Richardson were financed by Alleghany to the extent of $7,500,000 and by Kirby to the extent of $5,000,000. They also had the right to compel Alleghany and Kirby to take off their hands at cost 600,000 of the 800,000 shares, although if the price of the stock went up they could keep it all.

On or about April 8, 1954, and just prior to the issuance of a statement to the New York Central stockholders soliciting their proxies for the Alleghany-Young-Kirby slate of directors, which by then included Murchison and Richardson, the Interstate Commerce Commission brought to the attention of the parties that the joint venture agreement contemplated by the 100,000 share options of Murchison and Richardson contained no guarantee to Alleghany against losses (Stockhausen 3885). Accordingly, on April 8th both Murchison and Richardson executed a letter addressed to Alleghany, in which they agreed that, in the event the 100,000 share options were exercised and the joint venture created, they would guarantee Alleghany against loss from its share of the joint ventures and guarantee a return of 4½% of its investment (Exs. 149, 150). And at the same time a proxy statement was sent to the stockholders of Central, describing the Murchison-Richardson arrangement in the terms set forth above (Ex. 125).

In the meantime, the proxy contest was proceeding apace, with Alleghany furnishing a total of $1,308,733.71 for its prosecution (Ex. 145).

[fol. 2204]

Revision of the March 15th Puts

After the successful proxy fight Young, accompanied by William E. Stockhausen, counsel for the Murchison interest, journeyed to Dallas for a conference with his Texas friends (Young 3144). At that meeting Murchison and Richardson agreed that the March 15th options from Alleghany would not be exercised, but that instead two joint ventures would be set up, one between Alleghany and Murchison Brothers and one between Alleghany and Richardson. These arrangements were reduced to writing and executed on July 15, 1954 (Exs. 151, 152). For its contribution to the Murchison Brothers joint venture, Alleghany purchased 150,000 shares of New York Central stock from Clint Murchison at $25 a share, and Murchison transferred an additional 150,000 shares to his sons, defendants Murchison Brothers, for their contribution to the joint venture. In the Richardson joint venture, Richardson contributed 150,000 shares. Alleghany also contributed 150,000 shares, 50,000 purchased from Richardson and an additional 100,000 purchased from Clint Murchison. To finance the contributions of Murchison Brothers and Richardson, Alleghany lent each of them $3,750,000, representing 150,000 shares at $25 a share. The agreements provided that Alleghany would be guaranteed against loss and would receive a return of 4½% on its investment.

This revision of the March 15th agreements cost Murchison, according to Young, approximately $1,500,000 (Young 2968). Young testified that it was required to correct mistakes made by inexperienced employees who did not understand the original deal he had negotiated with Murchison and Richardson (Ex. 4, pp. 124, 212-16) and Murchison nods in assent (Murchison 965).

At the same time as the joint venture agreements replaced the March 15th options, Richardson exercised the put which had been granted him by Kirby and sold him 200,000 shares of Central stock at $25 a share.

[fol. 2205]

The 1954-5 IDS Stock Transfers

The next episode in the story took place in December, 1954. Without making any effort to determine where he might realize the most for Alleghany for its controlling investment in IDS (Young 3008), but remembering how Clint Murchison in July of 1954 had given Alleghany $1,500,000 solely on the basis of Young's assertion that the March 15th agreements were erroneous (Young 2968), Young negotiated a "package" deal (Ex. 376, pp. 49-53) with Murchison Brothers and their representative, Donald Carter. In this deal, Alleghany sold 45,000 shares of IDS stock to Carter at approximately $9 a share less than market price (Young 2949-53); agreed to sell 55,000 additional shares to Murchison Brothers at $13 over the market price, and agreed to exchange 130,000 voting shares of IDS for 130,000 non-voting shares held by Murchison Brothers on a share for share basis and obtained from Murchison Brothers options to purchase 135,000 shares of New York Central stock out of the 150,000 contributed by Murchison Brothers to the joint venture of July 15th (Exs. 163, 164, 159).

The transaction between Murchison Brothers and Alleghany with regard to the IDS stock was revised in April, 1955, to provide that, instead of the sale of 55,000 shares, Alleghany exchanged a total of 212,000 voting shares for the same number of non-voting shares held by the Murchison interests and certain others on a share for share basis (Ex. 22). When added to the shares sold to the Murchisons in 1953, this exchange effectively transferred to the Murchisons the control of IDS formerly exercised by Alleghany.

At the same time Alleghany exercised the options on the 135,000 shares of Central stock, giving Murchison Brothers a profit of $675,000 (Ex. 351). This transaction was consummated approximately a week after the "whole ball of wax" (Rep. 31), including the claims asserted by the Breswick plaintiff, had been "settled" by General Counsel.

[fol. 2206] The story of Messrs. Young and Kirby's acquisition of control of the New York Central, which began in December 1953 with the Young-Kirby acquisitions of Central stock for their own account, with the negotiations with Eaton, and with the first step in the transfer of control of IDS to Murchison Brothers, was then completed.

The proxy contest, which on January 19, 1954, Young had said was being run for the benefit of Alleghany, had produced the following results:

As of the Time of the Hearings (1955-1956)

1. Profits to Young and Kirby on their 200,000 shares of Central stock—$6,000,000 (Young, 2678).

2. Profits to Kirby on his 200,000 shares of New York Central stock acquired from Richardson—$4,800,000 (Young, 2679).

3. Profits to Richardson on the 150,000 shares which he retained after July 15th—$3,000,000 (Young, 2680).

4. Profits to Murchison Brothers on 135,000 shares sold to Alleghany pursuant to the terms of the December 1954 package deal—$675,000 (Young, 2680).

5. Profits to Murchison's representative, Donald Carter, on his 15,000 shares in the Murchison Brothers-Alleghany joint venture—$360,000 (Young, 2680).

6. Profits to Murchison Brothers on Alleghany's sale to them of 33,150 shares of IDS stock in December 1953—$7,044,375 (App. B(B)(ii)).

7. Profits to Donald Carter of $56,250 on his December 1954 purchase of 45,000 shares of IDS stock.

8. Alleghany lost control of IDS which we estimate to have a value of $5,000,000.

As of the Present Time:

Since the hearings the causes of action have been affected by a decline in the price of New York Central to $29 a

[fol. 2207] share and an increase in the price of IDS to $179 a share plus a $22 a share spin off of Canadian IDS.* This has had the following effect on the claims itemized above:

Item 1:

In view of the drop in the market price of New York Central stock, Young and Kirby's profits on their 200,000 shares has been reduced to about $2,000,000. But Alleghany still suffers damages in the amount of $2,865,760 by reason of Young's and Kirby's acquisition of the 200,000 shares for their own personal account at $19 a share. On January 19, 1954, when, according to Young, the Alleghany Board rejected his offer of the 200,000 shares, they did so only after he promised "we were laying them out on the table for the benefit of Alleghany Corporation" (Young 2349). But when, later in 1954-1955, Young decided that Alleghany should purchase New York Central stock, the 200,000 shares at $19 were no longer "out on the table" and Alleghany had to buy its stock at prices as high as $48 a share. Alleghany purchased a total of 823,600 shares (Ex. 217) at an average price of $27.10. Over 200,000 of these were at prices between $30 and $48 per share. Applying the Young-Kirby price of $19 to the 200,000 shares acquired by Alleghany at the highest prices (Ex. 217), we find that Alleghany was put to the total added expense of $2,865,760 which Alleghany would now have in its coffers, had Young and Kirby lived up to their trust.

Items 2, 3, 4, and 5:

Kirby's profits under item 2 have been reduced by the market decline in New York Central to $800,000; Richardson's profits have been reduced by the same decline to $600,000; Murchison's cash profit of $675,000 remains unchanged: Carter's profit has been reduced to $60,000.

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* Prices are based on quotations obtained from brokers by counsel for objectant on January 9, 1959.

[fol. 2208]

Item 6:

Because of the increase in IDS prices, the profits to Murchison Bros. on the 33,150 shares of IDS taken from Alleghany in December of 1953 have increased to $29,172,000.*

Item 7:

For the same reason as Item 6, the profits to Donald Carter on the 45,000 shares of IDS taken by him in December 1954 have increased to $6,063,750.*

Item 8:

Being an estimate of value, remains unchanged at $5,000,000.

The Young-Kirby Purchase of 200,000 Shares of New York Central

This aspect of the case was considered worthless by General Counsel when he negotiated his settlement on April 18, 1955 (Pomerantz 4453). By divorcing the transaction from the rest of the Young-Kirby campaign to obtain control of New York Central and treating the matter as an abstract question of corporate law, the Referee has been able to reach the same conclusion. Thus he states:

> "The Referee does not believe that the purchase by directors in a very active market, with their own funds, of a block of stock constitutes appropriation of a corporate opportunity where the purchase by directors in no wise prevents the corporation from making similar purchases" (Rep. 72-73).

Misapplication of the Corporate Opportunity Doctrine

This overlooks, of course, the fact that Young and Kirby controlled the Board of Alleghany. Aside from that, however, the fact that Young and Kirby used their own funds in making the purchase is immaterial. As the Court

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* See Appendix B.

[fol. 2209] stated in *Irving Trust Co.* v. *Deutsch*, 73 F. (2d) 121 (2d Cir., 1934):

> "The theory of the suit is that a fiduciary may make no profit for himself out of a violation of duty to his cestui, *even though he risk his own funds in the venture,* and that any one who assists in the fiduciary's dereliction is likewise liable to account for the profit so made. See Jackson v. Smith, 254 U. S. 586, 41 S. Ct. 200, 65 L. Ed. 418; Wing v. Dillingham, 239 F. 54 (C. C. A. 5); Trice v. Comstock, 121 F. 620, 61 L. R. A. 176 (C. A. A. 8); Wendt v. Fischer, 243 N. Y. 439, 154 N. E. 303; Blake v. Buffalo Creek R. Co., 56 N. Y. 485; Dutton v. Willner, 52 N. Y. 312; Farwell v. Pyle-National, etc., Co., 289 Ill. 157, 124 N. E. 449, 10 A. L. R. 363; Higgins v. Lansingh, 154 Ill. 301, 40 N. E. 362; Trenton Banking Co. v. McKelway, 8 N. J. Eq. 84" (73 F. 2d 123; italics added).

Nor is it so clear that the purchases by Young and Kirby did not prevent the corporation from making similar purchases. Young himself testified that almost immediately after January 19, 1954, the date he finally advised the other Alleghany directors of his plans, the price of New York Central rose above the $19 that he and Kirby had paid for their shares (Young 2388).

What the Referee Has Ignored

By ignoring the fact that the 200,000 share transaction was simply one aspect of the Young-Kirby campaign to use their position as directors of Alleghany to obtain control of the New York Central, the Referee is able to reduce the problem to the simple one of corporate directors making an investment for their own account in a market that was equally availabl to the corporation.

But the Young-Kirby purchase was considerably more than that. Alleghany's business was that of holding the

[fol. 2210] stock of other companies, particularly railroads. One of its most valued possessions was a controlling interest in C. & O. Young testified that in December, 1953, he recognized the profitability, wisdom and, in fact, the necessity of Alleghany's acquiring control of the New York Central; that he discussed the matter with defendant director Kirby and that they agreed that Alleghany should take all necessary steps to acquire such control, including divesting itself of the C. & O. With full appreciation of the fact that it would be in Alleghany's interest in pursuance of the aforesaid program to acquire Central stock at the lowest possible prices, and knowing also that the activities of Alleghany in acquiring and building up Central would cause a rise in its market price, Young and Kirby then personally purchased for their own account 200,000 shares of New York Central at the low price of $19 per share.

Following these purchases and in accordance with their plan, Young told the Alleghany Board of Directors at its January meeting that Alleghany would embark on a program of acquiring New York Central stock; that Alleghany was going to give up its valued control of C. & O. and that the relinquishment of this control of C. & O. had already been negotiated with Cyrus Eaton (Ex. 384).

Young-Kirby Use of Alleghany Resources

Even if the Court could accept the Referee's conclusion that the 200,000 shares was not a "corporate opportunity", Young and Kirby would nevertheless be liable for the profit on their shares in view of their utilization of the resources of Alleghany to enhance the value of those shares by:

1. Causing Alleghany to relinquish its valued control of C. & O. and thus remove the legal obstacles to Young's or Alleghany's control of Central.

[fol. 2211] 2. Spending in excess of $1,300,000 of Alleghany's money on expenses of a proxy fight which sent the price of Central stock soaring and insured the eventual control of Central by the Young interests.

3. Extending Alleghany's credit and funds to the Murchison and Richardson interests on a wholesale basis to the extent of millions of dollars for stock purchases on which Alleghany could not profit.

4. Liquidating Alleghany's holdings in and surrendering control of Investors Diversified Services in order to make a firm alliance with the Murchison interests.

In taking all of these actions, Alleghany's resources, credit and facilities were appropriated to enhance the value of Central stock and did, in fact, enhance the value of that stock to the personal profit of defendants Young and Kirby on the 200,000 shares they bought at a time when they knew that Alleghany was going to attempt to gain control of Central.

The so-called doctrine of corporate opportunity is simply one aspect of the duty of fiduciaries not to misuse their position for their own benefit. As the court stated in *Marcus* v. *Otis,* 168 F. 2d 649 (2d Cir. 1948):

> "We do not hold them for stepping in ahead of the company, and seizing for themselves a promising bargain available to them only because they were directors, for we accept the judge's finding that the purchase of the 'Majestic' shares was not a 'business opportunity' which the defendants should have allowed 'Automatic' to take for itself. The wrong is much simpler and more fundamental—the misappropriation of funds —and it is neither an excuse that they later repaid what they had taken, nor that they allowed 'Automatic' to buy 25,000 shares at 57 cents. The bargain was void-

[fol. 2212] able from the outset, no matter how favorable the terms might be, and 'Automatic' can follow and reclaim the abstracted funds in any form they may take, however enhanced in value" (168 F. 2d at p. 654).

The parallel between the instant case and that of *Guth* v. *Loft*, 23 Del. Ch. 255, 5 At. 2d 503 (1939), is more than striking. Loft gave us its valuable sales of Coca Cola and committed its resources to the exploitation of Pepsi. Guth, having acquired Pepsi with knowledge that Loft's resources would be committed to its development, personally made the profits on Pepsi's ultimate improvement.

Messrs. Young and Kirby, once they decided that Alleghany would try to take control of Central knew that, as a legal pre-condition of the campaign, Alleghany would have to give up its valued control of the C. & O. They also knew that any announcement of their plans would cause a rise in the market, and without telling even their co-directors, they purchased 200,000 shares of Central for their own account. The only distinction between the cases is that Guth made all the profits arising out of the exploitation of Loft's resources. Defendants Young and Kirby made for themselves only a $6,000,000 profit and later graciously arranged to permit Alleghany to take some of the profit for itself.

We submit that Alleghany is entitled to all the profits arising out of the utilization of its resources and not merely that part of the profits which its fiduciaries deign to give it. As a matter of law, Young and Kirby must pay over to Alleghany their whole profit on the 200,000 shares or Alleghany's damages.*

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* At present market prices Young & Kirby's profits on these shares is about $2,000,000, however, they are liable on this claim under an alternative theory for a substantially larger amount (see *supra* p. 43).

[fol. 2213]

Alleghany's "Rejection" of the Shares

The proponents of the settlement have argued that there is no liability on this claim because the shares were offered to the Board and rejected. Although the Referee does not fully accept this argument (Rep. 70), he does refer to the testimony of Alleghany's secretary, Ireland, that the members of Alleghany's Board present at the January 19th meeting understood that the shares were being offered to them. But there is a clear discrepancy between the verbatim transcript of Young's remarks and the minutes prepared by Mr. Ireland (Ex. 118). In any case, instead of accepting Mr. Ireland's testimony as to what the directors understood, the Referee should have called for the testimony of Kirby as to whether any offer was actually made, and of some disinterested Board members as to whether any offer was actually rejected.

The "Too Speculative" Defense

Defendants argue that in January an investment by Alleghany in New York Central was too speculative. The Referee accepts this argument. Thus he states:

> "In January the only question for Alleghany was whether or not it should invest in Central stock in the hope of deriving a profit from its future market rise. Alleghany's management answered this question in the negative" (Rep. 71).

This is simply not the fact. At that meeting, the Alleghany Board of Directors authorized the purchase in the open market of 100,000 shares of Central (Ex. 118).

The Referee accepts the Young contention of "too speculative" notwithstanding the fact that less than a month later, on February 13, 1954, Alleghany's Executive Committee authorized an investment of $5,000,000 in the Central stock (Ex. 128). This was two weeks before Murchison

[fol. 2214] and Richardson acquired their stock. His report omits mention of this fact, but instead refers only to the March 15th agreements with Murchison and Richardson.

The Referee's argument that in March, Alleghany made its heads I win, tails you lose deal with Murchison and Richardson to insure that the voting power in the stock remained in friendly hands is entirely contrary to Young's testimony (2370-72). Young testified that he never had any understanding with Murchison or Richardson as to how the stock would be voted and that even in April, he heard rumors that Murchison and Richardson might sell the stock to unfriendly hands, and "I had not even a moral right to ask Clint to keep it if it was against his financial interests to keep it" (Young 2371, 2). If, as seems apparent the Referee did not believe Young's testimony or Murchison's similar tale (Murchison 967), he should have so advised the Court.

In August, 1955, the Breswick plaintiffs moved in the Federal Court for summary judgment on the 200,000 share cause of action. Judge Walsh denied the motion on the ground that Young's affidavit raised an issue of fact and that "Defendants are entitled to a full opportunity to present their defense." With respect to the "too speculative" argument, Judge Walsh wrote:

> "He [Young] denies that he or any of the defendant directors took advantage of a business opportunity available to Alleghany, claiming that whereas the investment in New York Central stock was a suitable speculation for Kirby and himself personally, it would have been unduly speculative for Alleghany. He further claims that if Alleghany had attempted to purchase the New York Central stock, it would have run up the market price of that stock. He does not explain why under these circumstances it was prudent for Alleghany to commit itself to purchase 300,000 shares

[fol. 2215] of New York Central stock at the option of Murchison and Richardson" (*Breswick* v. *Briggs,* 135 F. Supp. 397, 402).

After giving defendants the full opportunity to present their defense, the Referee is able to dispose of the conclusion of Judge Walsh and the arguments of objectant only on the basis of a defense Young never asserted.

We remind this Court that this claim is one that was regarded as worthless by General Counsel (see, *supra,* p. 44) and one for which he received nothing in the settlement. Now the Referee concurs in Mr. Pomerantz's conclusion. In the light of the record, we submit that the report in no way justifies this conclusion. On this ground alone the settlement must be rejected.

The 800,000 Share Deal

Events of 1954-1955

The complaint (2nd cause of action) alleges that the transactions in which Alleghany financed for the Murchisons and Richardson the acquisition of the 800,000 New York Central shares, paid for the proxy fight, and gave Murchison Brothers control of IDS were acts in a conspiracy among Young, Kirby, Murchison and Richardson, the net effect of which was to injure Alleghany substantially.

By applying the same "treat in vacuo" analysis as he used with regard to the 200,000 Central shares, with each transaction considered separately as if it had no relation to any other, the Referee has avoided the necessity of making any findings as to the existence of the conspiracy. These are the relationships he has ignored:

1. In December 1953, at the time when Young and Kirby were discussing the desirability of acquiring control of New York Central, Alleghany sold 27,500 shares of

[fol. 2216] voting stock of IDS (24% of the total outstanding voting stock) to Murchison Brothers.

2. In January 1954, Young, to eliminate a legal obstacle to obtaining control of the New York Central, negotiated a sale of Alleghany's controlling stock in the C. & O. to Cyrus Eaton, who was sympathetic to Young's ideas (Ex. 4, pp. 177-8), and agreed with Eaton that Alleghany's representatives on the C. & O. Board of Directors would resign. At that time the C. & O. owned 800,000 voting shares of New York Central.

3. On February 12, 1954, Young obtained from Alleghany's Executive Committee authorization to invest up to $5,000,000 in a syndicate to purchase the 800,000 shares (Ex. 128).

4. Shortly thereafter, fearful of the Interstate Commerce Commission's attitude toward Alleghany's ownership of any part of the 800,000 shares (Young 3100-02), Young negotiated a deal with Murchison and Richardson by which Alleghany would finance the purchase of the shares by Murchison and Richardson.

5. On March 15, 1954, the deal negotiated by Young was reduced to writing. It provided that as to 400,000 of the 800,000 shares Murchison and Richardson were given "puts" pursuant to which Alleghany could be required to purchase the stock if it fell below $25 a share, but would have no right to acquire the stock if it rose above that price. The terms of these written agreements have been found by the Referee to have been unduly favorable to Murchison and Richardson and unduly burdensome to Alleghany (Rep. 80).

6. Beginning on April 6, 1954, the actions, into which the present ones have been consolidated, were instituted, charging among other things that the Murchison-Richard-

[fol. 2217] son "puts" were a fraud on Alleghany and its stockholders.

7. On April 8, 1954, the Murchison-Richardson "puts" were amended to provide that with respect to 200,000 shares, Alleghany was to be guaranteed against loss (Exs. 149, 150).

8. In July 1954, the earlier agreements with Murchison and Richardson were abandoned and Alleghany was given an opportunity to share in any enhancement in the value of 300,000 of the 800,000 shares (Exs. 151, 152).

9. In November, 1954 an agreement was entered into between Alleghany and Murchison Brothers allegedly strengthening certain guarantees to Alleghany against loss from its New York Central investment (Ex. 158).

10. On December 13, 1954, Alleghany was given an option to recapture 135,000 of the 800,000 New York Central shares at a profit to Murchison Brothers of $675,000 (Ex. 159).

11. As part of the package that included the option on 135,000 New York Central shares, Alleghany agreed to turn over control of IDS to Murchison Brothers. The original agreement provided that Alleghany would receive a premium of approximately $700,000 for this control (Ex. 163). In April 1955, when Young decided it was inexpedient to obtain this premium, control of IDS, found by the Referee to be of "very substantial value" was given to the Murchisons for nothing (Ex. 22).

The Young-Murchison Story of the Puts

The Referee finds it entirely unnecessary to take a position with respect to Young's fantastic story that both his own and Murchison's counsel were unable accurately to reduce to writing the terms of the March 15, 1954 agree-

[fol. 2218] ment and that not only he, but Kirby and three other Alleghany directors as well, signed minutes approving these "incorrect" documents prepared by these attorneys. Although the Referee recognizes (Rep. 80) that the deal as written was unduly favorable to Murchison and Richardson and unduly burdensome to Alleghany, he says this is immaterial since in July the alleged errors were corrected.

We submit that the Referee's disposition of the original Murchison deal is entirely too glib. Those arrangements cannot be disposed of simply by finding that in July the original agreements were abandoned. As discussed below, Young himself tied that original deal, which the Referee has found was unduly burdensome to Alleghany, to the later transactions which included the gift of control of IDS to the Murchisons. Accordingly, this Court must examine the facts as to the Murchison deal and decide for itself whether Young was testifying truthfully when he placed the entire guilt for the transaction on his and Murchison's attorneys.

The effect of the March, 1954 options and loans granted to Murchison and Richardson was to subject Alleghany to all of the risk of loss on 400,000 shares of Central stock, while at the same time, since they were *options,* Alleghany had no chance to participate in any profits on these shares.

Mr. Young's defense is that he never intended that Alleghany should be subjected to any risk on the 800,000 shares, that he never agreed to give Murchison the unconditional put for 200,000 shares by which Alleghany could no profit, but only lose, on an investment of $5,000,000, and that the March 15th agreements were the fault of inexperienced employees (Ex. 4, pp. 125-127, 212).

Young's Incredible Testimony.

Mr. Young's version of the Murchison-Richardson deal would be incredible even if it had not been contradicted

[fol. 2219] by the sworn testimony of witnesses who were not merely disinterested but who are actually sympathetic to the defendants. Mr. Young testified that the March 15th agreements were incorrect in two respects: first, the joint venture agreement applicable to the 100,000 share puts failed to guarantee Alleghany a fixed return against loss of principal; and second, the Murchison put, conditioned on the entry into a joint venture, should have been for 200,000 shares rather than for 100,000 shares (Ex. 4, p. 125-7). He stated that, although these agreements were entered into in March, he did not discover these errors until late May or June (Ex. 4, p. 124). This Court is asked to believe Mr. Young's testimony in the face of the following facts:

1. On March 12, 1954, the Executive Committee of Alleghany Corporation authorized the execution of puts with Messrs. Murchison and Richardson. The resolutions of the Committee, containing the precise terms of the puts as they appear in the March 15th agreements, were signed by Mr. Young, as well as the other four members of the Committee, including Allan P. Kirby (Exs. 135, 136).

2. Although one of the "errors" was discovered on April 8, 1954, and was corrected by having Messrs. Murchison and Richardson execute letters confirming a previous agreement that the joint ventures were to contain guarantees for Alleghany, no one discovered the second error until Young himself "discovered" it in May or June (Ex. 4, p. 124).

3. On April 8, 1954, the Alleghany-Young-Kirby slate sent out a proxy statement to the New York Central shareholders approved by Young (3137), describing the agreement between Alleghany, Richardson and Murchison in exactly the terms of the March 15th written instruments, as supplemented by the guarantee of April 8th (Ex. 125, p. 3).

[fol. 2220] 4. Charles T. Ireland, Jr., at that time house counsel and Secretary of Alleghany Corporation, and now Secretary of the New York Central Railroad Company, testified that Mr. Young was his source of information with regard to the terms of the Richardson deal (Ireland, 3840) and that during the course of preparation of the agreements, he discussed their contents with Mr. Young. Mr. Young made no "comment" and the agreements were subsequently completed substantially in the form outlined in that conversation (Ireland, 3847). Some time in April 1954, at Mr. Young's request, Ireland sent him a memorandum outlining the terms of the Murchison-Richardson "puts" (Ex. 449). Actually that memorandum described the agreements in the exact terms of the written documents, but he never heard from Mr. Young on the subject until late May or June of 1954 (Ireland, 3857-8).

5. The Murchison attorney who shared responsibility with Mr. Ireland for the alleged "errors" was William E. Stockhausen, a member of the firm of Satterlee, Warfield & Stephens, attorneys for Mr. Murchison and his various interests since about 1949. Mr. Stockhausen testified that he was given the broad outlines of the deal, including the put arrangements by both Mr. Ireland and *Mr. Murchison;* that before the agreements were executed, he sent drafts of them to counsel for Mr. Murchison in Dallas (p. 3884), and that no one advised him that the agreements which he had prepared did not properly reflect Mr. Murchison's intentions, with the exception that some time in April, he was advised that the joint ventures should contain a guarantee provision. But even with respect to the guarantee, it appears from Mr. Stockhausen's testimony that the correction was made, not as a result of any advice from Mr. Murchison or from Mr. Young, but on the basis of advice from "ICC investigators" (Stockhausen 3885).

Although Mr. Stockhausen was present at the conference in Dallas, during which—according to Mr. Young—Mr.

[fol. 2221] Murchison so casually gave Alleghany Corporation $1,500,000 because the lawyers had made a mistake, not even then did Mr. Murchison tell him that the March 15th agreements had not been properly prepared. Thus, Mr. Stockhausen testified (3885-6):

> "Q. Did Mr. Murchison tell you, at any time that you had failed to prepare the March 15th agreements properly, in accordance with his intention and understanding? A. No sir."

6. The proxy statement sent out to the New York Central stockholders, in which the March 15th agreements were described, was the work of Gerrard W. Glenn, at the time of the hearing, a former member of the firm of Lord, Day & Lord, and then Vice President, Law, of the New York Central Railroad Company. Mr. Glenn's testimony is that in fifteen or twenty conversations with Mr. Young with respect to the proxy material sent out to the New York Central stockholders, Mr. Young never advised him that the references in the proxy statement to the Murchison-Richardson deal were in any way incorrect (Glenn 3652).

We submit that the Young-Murchison version of the transaction is completely irreconcilable with the testimony of Messrs. Stockhausen, Glenn and Ireland, three experienced members of the Bar, who, if they are prejudiced at all, must be assumed to be prejudiced in favor of their clients and of the settlement. Clearly the deal Mr. Young negotiated with Messrs. Murchison and Richardson was that set forth in the original documents dated March 15, 1954. In that deal, in return for the 800,000 notes in the forthcoming proxy contest, Young committed Alleghany to purchase 400,000 shares of Central stock from Murchison and Richardson if the market price fell below $25, with no obligation on the Texas defendants to sell if the market went above $25.

In the light of this evidence, the Referee found it disposes of the Murchison-Richardson deal by holding, as a

[fol. 2222] matter of law, that, since damage to Alleghany had been eliminated by the July rescission, it was not necessary for him to take any position as to the truth of the story told to him.

Defendant's Recognition That the Puts Were a Wrong to Alleghany

We submit that the Referee's attitude to the Young story is a mite short sighted. If, as we believe, the record requires that Young's story be disbelieved, the implications go much further than the Referee indicates. Once we assume that the March deal with Murchison and Richardson was, as the Referee found, unduly burdensome on Alleghany and unduly favorable to Murchison and Richardson, it becomes necessary to ascertain what it cost Alleghany to get out of it.

We believe the record shows this quite clearly. Beginning in April 1954 and continuing to April 1955, Alleghany and the Murchisons engaged in a series of transactions all designed to undo the damage done in March. In effect, the defendants, among themselves, began to "settle" the litigation. Indeed this is admitted by defendants. Thus in their memorandum in support of the settlement, submitted to the Referee, defendants wrote (pp. 9-10):

"The Terms of the Proposed Settlement

The consideration given and to be given by defendants to Alleghany is as follows:

(a) Confirmatory guarantees by the Murchisons and Richardson to Alleghany against loss from its investment in New York Central stock and of a 4½% minimum return thereon.

(b) Grant by the same to Alleghany of the privilege to exercise voting rights on an additional 300,000 shares of Central stock belonging beneficially to the grantors and to pledge such shares as security for debts of Alleghany.

[fol. 2223] (c) The grant by the same to Alleghany of an option, which has since been exercised, to buy 135,000 shares of said stock at a price which was $1,544,062.50 less than the market value on the date the option was exercised.

(d) Payment to Alleghany by Central of $1,308,733.71 as reimbursement for the former's expenses in connection with the proxy contest.

(e) Guarantees made and to be made by the Murchisons to Alleghany with respect to the joint ventures between them."

Defendants thus recognized that there was merit to the claim that the February and March transactions between Alleghany and the Murchisons were a wrong to Alleghany for which defendants were liable. Unlike the Referee, they knew that this wrong had not been fully corrected by the July rescission of the deal but instead, even in December of 1954, there remained a claim to be settled.

It is significant that the above events occurred some time before General Counsel negotiated his settlement. They were done in recognition by the defendants that the March agreements with Murchison and Richardson were not innocent errors by counsel, but were wrongs to Alleghany that required "settling".

It is, of course, true, as the Referee states, that there was no "settlement" that could be a "quid pro quo" for the "heavy financial sacrifices" of Murchison and Richardson. But the Referee concedes that "it is at least ar-

guable" that they should have demanded a "quid pro quo" (Rep. 80). We do not think it is hard to find.

The Cost to Alleghany of Undoing the 800,000 Share Deal

The Court will note that one of the transactions in the "settlement" was the grant by Murchison Brothers to Alleghany, on December 13, 1954, of an option to purchase 135,000 of the 800,000 New York Central shares originally acquired from the C. & O.

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[fol. 2224] On the same day, Young, remembering how "I had put Mr. Murchison, Sr. to the test of fire by having him live up to an oral agreement which cost him a million and a half dollars to say 'yes, you're right, Bob'" (Young 2968) entered into an agreement to transfer control of IDS to Murchison Brothers. While the original agreement called for a premium of approximately $700,000 to Alleghany for that control (Ex. 163), in April, 1955, Young decided to forego the premium and gave control to the Murchisons for nothing. Indeed, Alleghany's stockholders were told that the transfer of IDS control was the "quid pro quo" for the "settlement" of Young's troubles arising from the New York Central deal.

At the special meeting of stockholders of Alleghany held on February 8, 1955, David Wallace, Secretary of Alleghany and Chairman of the meeting, in response to questions from a stockholder as to the justification for Alleghany's giving up its voting control of IDS, stated:

> "Also, our contract with Murchison Bros. you might say in general parlance, is a package deal, because we did get from them options to purchase some of the Central stock held by them * * *" (Ex. 376, pp. 49-53).

In the light of this statement it is impossible to understand the Referee's finding (Rep. 90) that

"No evidence was adduced on the hearings to establish that this IDS transaction was a reward to the Murchisons."

Moreover, to dispose of the entire 800,000 share transaction on the ground that the damage was repaired by the July revision or that Alleghany had no "tangible expectancy" in the stock (Rep. 84) is simply to blind oneself to the reality of what went on.

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[fol. 2225] The cynical disregard of their fiduciary obligations by Messrs. Young and Kirby in using the funds and credit of Alleghany so that Young could realize his ambition to wrest control of Central from the "bankers" is not excused by the fact that Young was able to persuade the Texas defendants to change the deal or that the defendants are now paying $1,000,000 to Alleghany. (We do not know, of course, what part, if any, of this amount, is for these claims.)

Messrs. Young and Kirby are liable to Alleghany for *all* of the profits produced for themselves and the Texas defendants by use of Alleghany's resources, and the Texas defendants who participated in and profited from Young and Kirby's breach of duty are equally liable. *Irving Trust Co.* v. *Deutsch,* 73 F. 2d 121, 123 (2nd Cir., 1934); *Alster* v. *British Type Investors,* 83 F. Supp. 949, 953 (S. D. N. Y. 1949).

The transparent falsity of the Young-Murchison version of the New York Central deal has implications that go far beyond the New York Central deal. Young and Murchison were by far the two most important witnesses before the Referee. They were the only defendants whom the proponents produced as witnesses. Where, as here, their testimony as to so important an aspect of this litigation was demonstrably false, the Referee should have found them unworthy of belief with regard to any other aspect of the

action. On this ground alone, the Referee should have declined to give his approval to the settlement. Certainly there could be no excuse for the Referee's failure to demand the testimony of Kirby on these crucial issues.

The Transfer of IDS Control to the Murchisons

Although the Referee finds that control of IDS has a "very substantial value" (Rep. 118), he finds no merit in the claims arising out of the several sales to and the ex-

[fol. 2226] change of voting stock with the Murchison interests, which finally led to the effective transfer of control from Alleghany to the Murchisons. He bases his conclusion on a finding that, until the 1958 decisions in *SEC* v. *Insurance Securities,* 254 F. 2d 642 (9th Cir., cert. den. Oct. 12, 1958), the SEC would not have allowed Alleghany to keep any premium paid for transfer of control.

The Referee's Misinterpretation of the SEC Opinion

The Referee's finding of no merit in the claims is simply wrong and is contrary to all the available evidence. The record is clear that the most onerous restriction contemplated by the SEC's General Counsel's Opinion of May 11, 1942, affected only that portion of the premium obtained for control, which was allocable to the investment advisory service of Alleghany. As explained by defendants' own counsel, not more than 10% of such control premium might have to be surrendered by Alleghany (Ex. 296 a, b and c; Ex. 341, 11.8-9). As it turned out, when the SEC was challenged on the effectiveness of its General Counsel's Opinion, the Court held that *no* part of the premium would have had to be surrendered (*SEC* v. *Insurance Securities, supra*).

It was not fear of being made to account for any premium for control that caused Alleghany to give it away; rather it was fear of SEC investigation.

When the SEC showed interest in the relationship of Donald Carter, one of the Murchisons' friends who purchased IDS stock from Alleghany below market value in December 1954, to the New York Central proxy fight (Ex. 342), Young decided to avoid any investigation. In this he was guided by his attorney, Mr. Wheeler, who advised that Young should avoid any payment of premium for control of Alleghany at that time because of the possibilities that the SEC might conduct an embarrassing investigation (Ex. 343).

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[fol. 2227] The Referee disposes of our objection that the real motivation for Alleghany's willingness to give up the premium for control was based on its fear of SEC investigation on the ground that it is immaterial, since whatever may have been defendants' motive, Alleghany could never have retained the premium in any event. Aside from the fact that this conclusion is erroneous to the extent of at least 90% of the premium, the Referee does not explain why Alleghany rejected the other alternative open to them, namely, retaining this valuable control. The answer, we submit, is obvious. Retention of control was never an alternative available to Alleghany, because Young was committed to give it to Murchison.

The Referee's Disregard of the Evidence

As we have pointed out above, the Referee found (Rep. 90) "no evidence" that the transfer of control was a reward to the Murchisons for their assistance in the proxy fight. He makes this finding in the face of testimony by Young (brought to his attention in our memoranda) that in transferring control to the Murchisons, he remembered Clint Murchison's generosity to the tune of $1,500,000 when the New York Central deal was revised (Young 2968), and without regard to Wallace's statement to the Alleghany stockholders' meeting that the transfer of control was part of a "package" by which Alleghany got back some of the

800,000 New York Central shares (Ex. 376, pp. 49-53). The Referee states "extensive testimony was adduced before me by defendants to support their contention that this transaction was in the best interest of Alleghany" (Rep. 91). That testimony consisted solely of the statements of witnesses Young and Wallace.

Defendants' Refusal to Seek Best Offer

Young and Kirby knew that in 1949, at a time when any investment in IDS was highly speculative, they made Alleghany pay a one million dollar premium for control of that

[fol. 2228] company. They had every reason to know that in 1953-4-5, when IDS was flourishing, in good standing with the SEC, and in control of a vastly greater financial and industrial empire, its control was worth several times the amount paid in 1949. Because he was committed to the Murchisons, Young, without seeking a competitive offer, and without making any inquiry whatsoever of outside interests, proceeded to give control for nothing to the Murchisons.

Certainly, the wilful refusal of the Alleghany officers and directors even to determine how much could be obtained for the transfer of control is inexcusable. *Wheeler* v. *Abilene National Bank Building Co.*, 159 Fed. 391, 394 (8th Cir. 1908).

The Offer to Restore Control

We are proud to acknowledge the considerable increase in the original offer of settlement through the inclusion of the rescission of the April 1954 exchange of 130,000 for non-voting shares. But this offer to increase the original settlement, with the restoration of *de facto* control to Alleghany of IDS, still leaves Alleghany short of the IDS stock which constituted the other facets of the transfer of control scheme. The damages involved in the other aspects of the transfer of control are set forth above, pp. 42-44.

Impact of the Investment Company Act

The complaint alleges that on January 19, 1954, when it divested itself of its controlling interest in the C. & O., Alleghany became an unregistered investment company subject to the Investment Company Act (15 U. S. C. 80-a, *et seq.*), that by reason of Alleghany's failure to register as an investment company pursuant to the requirements of the Act, the following transactions violated Sec. 7(a) and other provisions of the Investment Company Act and were void under Sec. 47(b) of the Act:

[fol. 2229] a. Alleghany's loans to and stock purchases from defendants Murchison and Richardson by agreements made in March, July and December of 1954 in connection with 600,000 shares of New York Central acquired originally from the C. & O. (Comp. pars. 27, 29-34, 36-37, 42-51).

b. The sale by Alleghany to Donald Carter of 45,000 shares of IDS common in December of 1954 (Comp. pars. 38, 42-51).

c. The agreement of exchange of 130,000 shares of IDS voting for non-voting between Alleghany and the Murchisons in December 1954-March 1955 (Comp. pars. 38, 42-51).

d. The sale by Alleghany after January 19, 1954 of its non-railroad securities and the loss of earnings and profits resulting from such sales (Comp. pars. 48, 51).

The Referee disposes of the entire Investment Company Act issue by:

1. Adopting defendants' argument that they acted in good faith in causing Alleghany not to register as an investment company; and

2. Agreeing with general counsel that the only relief available to Alleghany stockholders under a statute designed for their protection would be harmful to them.

The Defense of "Good Faith"

In accepting the defendants' plea of good faith, the Referee rejects the contrary determinations of two judges of the United States District Court. *Schwartz* v. *Bowman*, 156 F. Supp. 361 (October 18, 1957), is a derivative action brought on behalf of Chesapeake & Ohio Railway Company against its directors, Alleghany, Murchison and Richardson. The complaint charges that the 800,000 shares of

[fol. 2230] New York Central stock were sold by the C. & O. to Alleghany, through its agents Murchison and Richardson, at a time when Alleghany was subject to the Investment Company Act, and that as a consequence the sale was void. Certain of the defendants, having been served outside the Southern District pursuant to the provisions of the Investment Company Act, made a motion for summary judgment dismissing the action upon the ground that the Investment Company Act was inapplicable. It was argued that Alleghany was not subject to the Investment Company Act, because at the time of the sale of the stock to Murchison and Richardson, there was still outstanding an order of the Interstate Commerce Commission, which provided in effect that until that order were revoked, Alleghany was a carrier, subject only to the jurisdiction of the Interstate Commerce Commission. In rejecting that argument, Judge Dimock quoted from the decision of the three-judge district court in *Breswick & Co.* v. *U. S.*, 134 F. Supp. 132, 142, as follows:

> "Whatever might have been the terms of the order of June 5, 1945, they could not have conferred upon Alleghany qualifications to be 'considered as a carrier' which it did not possess. From the instant of Alle-

ghany's relinquishment of control of the C. & O. and the Nickel Plate, plaintiffs here were entitled to the special protection which Congress had provided for stockholders in investment companies which do not control railroads. *Although failure to apply for vacation of the order might estop Alleghany, it could not shield it from the S.E.C. and it would not be binding upon such third persons as stockholders of Alleghany.* As to all except Alleghany, which had accepted the 1945 order as it read, its provision for regulation by the I.C.C. after the factual basis for I.C.C. jurisdiction ceased, was empty fiat." (Italics added).

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[fol. 2231] Judge Walsh in *Breswick* v. *Briggs*, 135 F. Supp. 397, had this to say about the defendants' contention that they were entitled in good faith to rely on the continuing effect of the 1945 I.C.C. order:

"Defendants claim they relied on the continuing effect of the I.C.C. and S.E.C. orders even though they, of course, knew that the sale of C. & O. terminated the only fact upon which these orders were based. That these orders had in law no effect after January 19, 1954, the date of the sale of the C. & O. was more fully explained in Breswick v. United States, supra. It now seems to me that, as a matter of law, their lack of legal effect was so obvious that professed reliance upon them in good faith is patently frivolous." (135 F. Supp. at p. 400).

The Referee rejects this decision of the Federal Court because Judge Walsh "did not have an opportunity of hearing witnesses testify or the more comprehensive documentation offered during the hearing." (Rep. 106).

But the testimony of the witnesses is again reduced to the word of Mr. Young that he relied on the advice of counsel. No written opinions of counsel were offered by

the defendants and none of the counsel upon whom Young presumably relied were presented to testify as to what they told him. Thus, the testimony of witnesses and the "comprehensive documentation" upon which the Referee relies are reduced to the word of Mr. Young and the administrative orders in question. The same defense was presented to Judge Walsh and was found by him to be "patently frivolous".

Even if the testimony of Mr. Young were accepted at par value, the defense of good faith reliance on the administrative orders must fail as a matter of law, as Judges Walsh and Dimock found. Young's testimony amounts to nothing more than the statement that he was advised by

[fol. 2232] his counsel that the administrative orders remained in effect until revoked. There is no suggestion that Young ever received an opinion of counsel absolving him from the duty he owed to the stockholders of Alleghany Corporation to act affirmatively in bringing Alleghany under the jurisdiction of the SEC for the protection of its stockholders. Young was able to rely on the answers given him by his counsel because he was careful to ask only the right questions.

However, far from establishing his good faith, Young's testimony before the Referee clearly demonstrates his lack of it. He testified (2383) that Alleghany's attorneys Wheeler and Wheeler talked with "key members of the Commission" who advised them that the 1945 order remained in effect and "suggested to Senator Wheeler that Alleghany make an application for the voiding of that order." But, according to Young (2385), Wheeler advised against such an application

> "on the grounds that that would simply precipitate a public hearing, which might go on interminably, and that it was far better to leave the situation in its then

> status than to open up a forum for the New York Central to come in and raise a lot of issues that would confuse the stockholders of the New York Central."

Young's concern for stockholders was apparently limited to those of the New York Central. He was perfectly content to ignore his duties to Alleghany and its stockholders rather than risk upsetting his proxy fight.

The record does not indicate what Young told Judge Walsh to support his defense of "good faith." But on the basis of his testimony before the Referee, that defense is indeed "patently frivolous."

The Referee finds further support for defendants' good faith in the fact that neither the ICC nor the SEC took

[fol. 2233] affirmative action against Alleghany (Rep. 105). We respectfully submit that the standards of good faith applicable to corporate directors require something more than that they not get caught. As Judge Walsh stated in speaking of the 1945 SEC order exempting Alleghany from the Investment Company Act:

> "It did not absolve Alleghany in perpetuity from its obligation of voluntary compliance with the law as circumstances changed" (135 F. Supp. 397, 401).

The Defense of Injury to Alleghany

The Referee adopts General Counsel's view that enforcement of the Investment Company Act, expressly designed to protect stockholders of companies like Alleghany, would necessarily have been harmful to Alleghany.

We submit that the protection for stockholders afforded by the Investment Company Act is hardly as disastrous as the Referee assumes. A declaration of nullity is not the only remedy available under the statute, and, even if it were, restitution is not the only consequence of such nullity. *Goldstein* v. *Groesbeck*, 142 F. 2d 422 (2d Cir. 1944);

Geismar v. *Bond & Goodwin*, 40 F. Supp. 876 (S. D. N. Y. 1941). In *Geismar* v. *Bond & Goodwin, supra*, the Federal Court in discussing the Securities Act of 1933, which contains language identical with that in §47 of the Investment Company Act, stated:

> "I think, too, that the language of the section is sufficient not only for the cause of action for rescission (6th) but also for the companion causes of action for money damages (2d, 3d and 4th). See Deckert v. Independence Corp., 311 U. S. 282, 61 S. Ct. 229, 85 L. Ed. 189" (40 F. Supp. at p. 878).

The mere fact that, as a means of effectuating the policy of the Investment Company Act, Congress provided that contracts in violation of the statute are void, does not de-

[fol. 2234] prive a court of equity of its historic powers to conform its relief to the requirements of the particular factual situation and to require wrongdoers to disgorge profits obtained as the result of illegal acts. *Lightfoot* v. *Davis*, 198 N. Y. 261, 270-273 (1910).

The Referee finds two "difficulties" with our contention that Alleghany could recover the defendants' profits (Rep. 103). The first is the familiar one of no proof of any conspiracy to which Murchison and Richardson were parties. We believe that the recital of the history of the Young-Kirby-Murchison-Richardson alliance to get control of New York Central furnishes ample proof of the conspiracy. Certainly it is sufficient evidence to require a finding that the Investment Company Act claims were not worthless, as General Counsel apparently felt (Rep. 102-3).

The second "difficulty" is that to give the corporation the defendants' profits would be to "reward Alleghany for its violation of the law" (Rep. 103). We suggest that the Referee's enthusiasm for the proposed settlement has led him astray. He treats the corporation as if it has some sort of life of its own, ignoring the fact that it was defend-

ants who caused Alleghany to violate the law. The law is designed for the protection of the stockholders; its violation harmed only them. It is hardly strange that the law should make them whole.

[fol. 2235] PART II

The Referee Erred in Approving the Settlement Without Hearing the Testimony of Allan P. Kirby

Allan P. Kirby, President of Alleghany Corporation, was named as a defendant but not served in this action. He has authorized use of his name in the settlement proceedings only for the strictly limited purpose of obtaining the release promised by the stipulation of settlement. He was never served in this Court by any of the consolidated plaintiffs—although served in the Federal *Breswick* v. *Briggs* action—he has never appeared and, so far as the record shows, he has never answered the allegations of the consolidated complaint or denied liability thereunder. Of all the defendants, he has profited most from the transactions complained of. Nevertheless, Mr. Kirby never saw fit to appear and give his version of the events.

The Referee's Refusal to Call Kirby

Our repeated requests that Mr. Kirby be directed to appear were rejected by the Referee (3476-7). The Referee's report makes no reference either to our requests that Kirby be called or to the desirability of his testimony.*

* Defendants sought to excuse Kirby's failure to appear by producing a physician to testify that Kirby could not testify without endangering his life. The Referee does not refer to this. Perhaps the Referee found it inappropriate to rely on the testimony of Kirby's physician, which was sharply disputed by the testimony of Dr. Harry Gross, a cardiologist called by us (3670-82). The more sanguine view of Dr. Gross was borne out by the fact that when, following Mr. Young's death, Kirby assumed the functions of principal executive officer of Alleghany, the public was assured by Alleghany's secretary that, "His health is excellent" (N. Y. Times, 1/27/58, p. 19, col. 4).

In view of his silence on the subject, we may infer that the Referee feels that this settlement should be approved and Mr. Kirby should be forever released from any liabil-

[fol. 2236] ity for his acts, leaving this Court and the stockholders to wonder what Mr. Kirby would have said about these transactions if he had been induced to talk about them.

The Referee's Misunderstanding of the Court's Role

The Referee's "hands off" attitude toward Kirby betokens, we submit, a complete misunderstanding of his role and that of the Court, in this proceeding. His view is, apparently (Rep. 39), that his function is completely fulfilled if he receives in evidence everything that the parties submit to him, but that he need have no curiosity about evidence that proponents do not choose to or that objectants cannot proffer. We submit that the Referee's view of his role in this proceeding is entirely too modest, and in this connection we refer the Court to the recent opinion of Mr. Justice Wyzanski of the U. S. District Court for the District of Massachusetts in *Heddendorf* v. *Bernard Goldfine et als.* (Appendix A).

In that case, a stockholder's derivative action brought on behalf of East Boston Company, against Bernard Goldfine and others, alleging mismanagement of the Company, a settlement was submitted to the Court for approval. There was no objection to the settlement, but on the contrary, it was recommended by all the stockholders who appeared. Notwithstanding, Judge Wyzanski, on his own motion, declined to approve the settlement unless defendant Goldfine filed a statement under oath with regard to the details of the cashiers and certified checks drawn by the Goldfine companies which had been the subject of Congressional investigation.

In explaining the role of the Court in a settlement proceeding, Judge Wyzanski wrote:

"In compromises of class actions, such as minority stockholders' suits, the District Court has been placed by higher authority in the role of what has been called 'a third party to the compromise', (*Masterson* v. *Per-*

[fol. 2237] *gament*, 6th Cir., 203 F. (2d) 315, 330, col. 2, 9 lines from bottom of the page) and what might perhaps be better called *a guardian of absent parties and of the corporation as a whole*. Cf. *Piccard* v. *Sperry Corp.*, S. D. N. Y., 36 F. Supp. 1006, 1009-1010, aff'd. per curiam 2nd Cir., 120 F. (2d) 328; *Upson* v. *Otis*, 2nd Cir., 155 F. (2d) 606, 614-615; *Birnbaum* v. *Birrell*, S. D. N. Y., 17 F. R. D. 409, Note 71 Harv. L. Rev. 874, 953, note 583. Moore's Federal Practice vol. 3, 3551-3560. The silence or the absence of shareholders does not relieve the judge of his duty. Indeed it may charge him with an added responsibility, at least in cases where the facts proved in his court and others revealed in other public tribunals strongly suggest that wrongs were done to the corporation for which extensive reparation may be due. Cf. Note, 54 Harv. L. Rev. 833, 838-839."

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"This Court does not find it necessary to consider for what reasons lawyers who have appeared in court as counsel for the plaintiffs and intervenors chose not to make defendant Goldfine answer under oath what he knew about the cashiers' or certified checks. Of course, a particular plaintiff or his lawyer may have reasons peculiar to himself for not prosecuting such an inquiry. And it may be that inquiry along these lines was for some reason foreign to the powers vested in, principles governing, or interests represented by the S. E.C., U. S. Department of Justice, or local Massachusetts authorities. But, whatever may be the limitations others accepted, this Court, *on behalf of its wards*, the unrepresented stockholders, cannot approve a compromise settlement until the Court knows from

what debts, and from what size claims, it is releasing defendant Bernard Goldfine and others. *Picard* v. *Sperry Corp.*, S. D. N. Y., 36 F. Supp. 1006, 1009-1010,

[fol. 2238] aff'd. per curiam, 2nd Cir., 120 F. (2d) 328. Cf. *Ladd* v. *Brickley*, 1st Cir., 156 F. (2d) 212, 215-220; *Upson* v. *Otis*, 2nd Cir., 155 F. (2d) 606, 614-615."

Judge Wyzanski's view of the Court's responsibility is not unique. In *Pergament* v. *Frazer*, 93 F. Supp. 13 (E. D. Mich. S. D. 1950), aff'd. sub nom. *Masterson* v. *Pergament*, 203 F. (2d) 315 (6th Cir. 1953), cert. den. 346 U. S. 532, the Court, in the midst of a settlement hearing, granted an adjournment and directed that during the period of adjournment, depositions should be taken "going to the extent of compelling defendants to assure the presence of witnesses who were seemingly under their control" (93 F. Supp. at p. 19).

In *Piccard* v. *Sperry Corporation*, 36 F. Supp. 1006 (S. D. N. Y., 1941), Judge Conger refused to affirm a settlement without a "full disclosure which would be obtained from an examination of the directors" (36 F. Supp., cf. p. 1008).

The Necessity for Kirby's Testimony

We do not intimate that this settlement may not be approved without the testimony of every defendant. What we do say, as Judge Wyzanski said, is that the settlement may not be approved until the Court knows, "* * * from what debts, and from what size claims, it is releasing * * * the defendants." The "size" of the claims depends on the prospects of success in establishing the facts. This Court cannot come close to a knowledge of the "facts" without the testimony of Kirby.

Throughout the report the Referee relies on the testimony of the "defendants." But it must be remembered

that the only defendants who testified were Young and Murchison, as well as Purcell whose testimony was limited to the 1950 IDS transaction. Had the Referee required the testimony of Allan P. Kirby, the President of Alleghany Corporation during the entire period covered by the com-

[fol. 2239] plaint and the man who gained the most out of the transactions complained of, additional light might well have been thrown on all the transactions complained of. For example, what would Kirby have had to say about:

1. Young's story that he and Kirby were committed to the 1950 IDS deal in December, 1949, notwithstanding the documentary evidence to the contrary (*supra,* p. 29)?

2. Young's and Murchison's fantastic story (Young 3142-7, Murchison 1103) that the March "puts" were mistakes by inexperienced employees, notwithstanding the documentary evidence to the contrary and the contradictory testimony of the three lawyers who drew the papers (*supra,* pp. 56, 57)?

3. Young's story that he offered Kirby's stock in New York Central to the Alleghany Board (Young 2391-2)—notwithstanding the contemporaneous verbatim transcript of Young's remarks which shows the contrary (Ex. 384)?

4. Young's and Murchison's fantastic story that the Alleghany Board affirmed the arrangements to have Alleghany finance the Murchison-Richardson purchase of the 800,000 shares without knowing how Murchison and Richardson would vote in the proxy contest (Young 2371-2, Murchison 967, 1176-77)?

5. The truth of the assertion in the 1950 IDS proxy statement (Ex. 30) that Young and Kirby devoted substantial time to IDS—in the face of Young's testimony that they devoted practically none (Ex. 4, pp. 51-52)?

6. Young's statement that the control of IDS, for which he and Kirby had caused Alleghany to pay a million dollars in 1949, was a liability in 1955 (Young 3004)?

[fol. 2240] It is submitted that Kirby's conduct in treating the hearing below with such manifest contempt does not entitle him to a passport to immunity. He used trickery in seeking to escape being examined in regard to his conduct as an officer and director of Alleghany. In so doing, he has made obvious his own convictions, not only that his testimony, if adduced, would have been most important, but that it would have cast light on dark corners of the record in a way which was not at all to defendants' liking. On the basis of the law and of the facts in the record, it is submitted that, without the testimony of Allan P. Kirby, the proposed settlement should not be approved.

The Settlement Should Not Be Approved Where Proponents Settle for Zero Amount Valuable Causes of Action Originated by Other Plaintiffs Whom Proponents Have Excluded from Settlement Negotiations

The Appellate Division has ruled in regard to the instant reference:

> "We construe the order of reference, in entitling appellant to raise any question as to the fairness, reasonableness or adequacy of the settlement, to include the issue and the effect, if any, of the exclusion of persons from the negotiations for settlement. We assume that unless there is an adverse effect on the settlement by reason of such exclusion, exclusion will not have been shown to be improper." (Zenn v. Anzalone, 1 App. Div. 2d 662, 146 N. Y. S. 2d 286; Exhibit 411).

The Referee has concluded that there was no such adverse effect (Rep. 33).

We submit that this finding is clearly erroneous. The Referee finds (Rep. 121) that it is the amended settlement

[fol. 2241] offer—which is materially higher than the original offer before the court—that he deems to be fair and reasonable. Nowhere does the Referee indicate that he would approve as fair and reasonable the original offer negotiated by the proponents of the settlement. But the Referee finds (Rep. 117-118) that it was objectant Rosen's counsel, with the assistance of counsel for the Breswick plaintiffs, who produced the amended settlement offer. That amended settlement offer was not made until, by an order entered in the United States District Court (*Breswick* v. *Briggs,* 135 F. Supp. 397 [1955]), defendants were required to negotiate with the Breswick plaintiffs. Since the Referee finds that it was the efforts of objectant's counsel and counsel for the Breswick plaintiff that achieved the higher settlement amount, it is difficult to comprehend his contradictory conclusion that the exclusive settlement negotiations with general counsel alone had no adverse effect on Alleghany Corporation. As is evident from the instant memorandum objectant still feels that even the increased settlement is inadequate and should not be approved.

Moreover, the evidence in the record compels the conclusion that the participation of stockholders other than the plaintiffs in this action would have been beneficial to Alleghany. The record shows that defendants derived great benefits from their exclusive negotiations with general counsel. To avoid such a result in the Federal Court, Judge Walsh enjoined defendants from pleading the instant settlement as *res adjudicata* in *Breswick* v. *Briggs,* writing:

> "It is highly important that the defendants not have the power to choose among the counsel representing stockholders the one with whom they will deal" (135 F. Supp. at p. 405).

Notwithstanding the Referee's finding to the contrary, the record amply demonstrates that general counsel for

[fol. 2242] plaintiffs was not adequately prepared to negotiate a settlement of the claims involved in this litigation at the time he met with defendants to settle the "whole ball of wax" (Rep. 31).

As demonstrated under Part I, the claims concerning the Young-Kirby purchase of the 200,000 shares of New York Central, the Young-Kirby transfer of control of IDS and the applicability of the Investment Company Act are substantial and supported by the facts and law. Yet General Counsel gave zero value to all these claims in his settlement negotiations (Pomerantz). Unless the Court agrees that a fair settlement negotiation would result in a zero value for each of these claims, it is manifest that defendants' selection of General Counsel as the only attorney with whom they wanted to negotiate had an adverse effect on the settlement.

The Referee Erred in Failing to Consider What Alleghany Might Recover If, Instead of Being Compromised, the Claims Were Tried

As is apparent from the prior sections of this brief, the claims which this settlement is to discharge are both diverse and substantial. They cover unrelated transactions that occurred during the period 1950 to 1955. The issues of fact and law raised by them are separable, distinct, and the claims are directed at different individuals.

The Referee has adopted the "whole ball of wax" technique used by the proponents of the settlement in arriving at their original agreement. By looking at the settlement, as if he were not an arm of this Court, but rather as a counsel for a contending party, he has come to a practical conclusion that the proposed settlement is a good way of getting rid of a litigation that has already consumed too much time of the parties, court and counsel.

[fol. 2243] While we do not suggest that the Court should ignore the practicalities, we do believe that it is more important that the Court be in a position to determine what the corporation is getting and what it is giving away. The Referee's report is of insufficient assistance to the Court in this respect.

As we have pointed out above, the Court is in no position to evaluate the proposed offer of settlement—particularly what Alleghany is getting over and above the cash payment.

The two basic ingredients in evaluating a cause of action for the purpose of judging the fairness of a settlement are an estimate of the probabilities of recovery on the one hand and, on the other, the amount that might be recovered if the claimant were successful. The Referee has chosen to ignore the latter consideration and his Report must stand or fall on his conclusion that, notwithstanding the record made before him, there is no probability that, even upon a full trial of the action (with the testimony of Mr. Kirby and others), there could be any recovery. If, as we submit we have demonstrated, there is found to be any significant merit to any one or more of the major causes of action here sought to be settled, then the settlement cannot be approved because of the failure of the Referee to take into consideration and to present to the Court the amounts that would be involved if any one or more of the claims were successfully prosecuted.

It is elementary that if there is any merit to a claim that is the subject of a compromise, the fairness of the settlement can be measured only against the product of the degree of merit and the amount involved. If there is a scintilla of merit, the consideration of one to the exclusion of the other presents an inadequate basis for judgment. See, *Heddendorf* v. *Bernard Goldfine, et al.*, Appendix A hereto.

[fol. 2244] CONCLUSION

This settlement proceeding has been unprecedented in the annals of stockholders' derivative litigation. It is now more than three and one-half years since the Referee began his hearings to determine whether the settlement negotiated by General Counsel was a fair one. The hearings developed important evidence, unknown to General Counsel at the time he made his original agreement with defendants, and going far to establish liability on the claims being compromised (Klinger 4520-69).

At the same time, the hearings developed evidence that is now the subject of an action in the United States District Court to enjoin consummation of this settlement because of the submission of allegedly false affidavits to the Federal Court by its proponents (*Breswick, et als.* v. *Young, et als.*, U. S. D. C., S. D. N. Y. Civ. No. 107-176). During the course of the settlement proceedings, the efforts of objectant, over the most vigorous opposition of the proponents of this settlement including General Counsel, resulted in increasing the amount to be received several times over what General Counsel had agreed theretofore to accept.

In the light of all this, we believe that the Court, in appraising the settlement, should itself scrutinize the evidence and examine the law. The Referee's report is of insufficient aid to such a scrutiny. It ignores or glosses over the evidence that tends to establish liability; and, where the evidence raised conflicts and issues of fact, instead of recognizing the respective merits of the positions taken, or calling for the needed testimony (in many cases available to defendants, e.g. Mr. Kirby) he merely gave defendants the benefit of the doubt.

Private litigants can settle a case for any amount and for any reason. But a court, in approving a settlement of a stockholders' derivative action, has the heavy responsibility of deciding whether or not the stockholders are get-

[fol. 2245] ting a fair result. We respectfully submit that, on the basis of the Report and this record, approval of this settlement should be withheld.

Accordingly, we respectfully request that the proposed settlement be disapproved.

Dated: New York, N. Y.
January 15, 1959

Respectfully submitted,

GRAUBARD & MOSKOVITZ
Attorneys for Objectant,
Samuel R. Rosen

Of Counsel:

SEYMOUR GRAUBARD
PHILIP KAZON
SHELDON D. CAMHY

[fol. 2246]

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 56-356-W

GEORGE R. HEDDENDORF FOR THE BENEFIT OF EAST BOSTON COMPANY AND BOSTON PORT DEVELOPMENT COMPANY

v.

BERNARD GOLDFINE ET ALS.

OPINION

November 5, 1958

WYZANSKI, *D.J.*

This action was brought by Heddendorf against the East Boston Company, of which he is a stockholder, and against Bernard Goldfine and other individual defendants. This Court's opinion of May 16, 1958, as amended May 20, 1958, recites the nature of the claims and the developments of the case up to then. By its orders in May 1958 this Court refused approval of what may be called the first settlement plan which had been proposed by the defendants and by the original plaintiff, Heddendorf, but which was opposed by several persons who had or have intervened as plaintiffs.

In June and against in August defendants conducted negotiations with all the parties of record. Through their joint efforts, there emerged a new proposed settlement. The parties laid this proposal before this Court on September 22, 1958. This Court directed that defendants should circulate the new plan to all stockholders of East Boston and

[fol. 2247] Boston Port, to the SEC the U. S. Attorney General, the U. S. District Attorney, the Massachusetts Attorney General, the Massachusetts Commissioner of Corporations and Taxation, and the Mayor of the City of Boston.

The Court had the *admittedly unexpressed* hope that a shareholder or possibly one of these public authorities would put its finger on what seemed an obvious weakness in the plan—the fact that it rested on inadequate disclosures by and examination of Goldfine.

But though defendants fully complied with this direction to give notice to all shareholders and to public authorities, no one has come forward with a suggestion for further inquiry into Goldfine's alleged mismanagement.

On November 3, 1958, this Court held a hearing on the issues whether the new settlement plan should be approved. At this hearing the Massachusetts Commissioner of Corporations and Taxation and the City of Boston sought to intervene for a limited purpose. Neither the Commonwealth nor the City showed any concern with Goldfine's lack of disclosure. They, as creditors, were seeking nothing more than immediate payment prior to shareholders and in a manner, so far as they knew, unprecedented in minority shareholders' suits to which creditors were not parties. Since it appeared that they had no *in rem* and indeed no *in personam* interests which required protection in this litigation, this Court denied the pleas for intervention by the officials of the Commonwealth and of the City.

The requested creditors' interventions having been denied, defendant Goldfine's counsel stated the nature of the new plan, referred to the more complete exposition he had made of the basically similar plan offered in open court on June 13, 1958, and proposed further amendments to the plan (such as a deferral of payment to Goldfine, a pledge of his stock, and postponement of payment of a debt due

[fol. 2248] to a company in which he was interested); all of which augmented the value of the offer made to minority stockholders.

No stockholder has in open court, or by pleading or other appropriate communication, objected to the plan of September 22 as it has now been amended. On the contrary, all stockholders who have expressed themselves have given their approval to the present version of the proffered compromise. Moreover, on its face, the plan in its cash and other provisions is plainly more favorable to the minority stockholders than was the original plan considered in this Court's opinion of May 16. The financial payments are approximately 50% better; the Little Building questions are resolved in a way that gives at least an appreciable benefit to the minority; and risks of future mismanagement are obviated. All the considerations stated in this paragraph are strong reasons for this Court giving its approval to the settlement plan as it now stands. Moreover, it is not irrelevant that no one has shown a wish to pay the expenses of future litigation with all its attendant risks. Cf. Moore's Federal Practice, vol. 3, p. 3553 note 18.

Yet there is one aspect of this case which with a due regard to its duty this Court cannot let pass unnoticed. This Court, like the general public, is aware that during hearings before a committee of Congress it appeared that one or both of the two corporations involved in this case purchased cashier's checks which were used for undisclosed purposes. This is *not* a matter of which the Court takes judicial notice, as though it were evidence. But it is a matter which is relevant in deciding whether the Court by approving a settlement should, in effect, block further inquiry and reparation.

Needless to add, it is *not* the concern of this Court in the present stockholder's suit to inquire as to whether the use of these checks violated some criminal law, some tax

[fol. 2249] law, or some regulatory enactment, national or local. Nor is it this Court's concern to serve in these proceedings as an auxiliary to a Congressional committee, or to aid a prosecution for contempt of Congress.

This Court is concerned with, and only with, a civil role which has been thrust upon it by the Rules of Civil Procedure promulgated by the Supreme Court of the United States and reported to Congress by the Attorney-General. Under Rule 23(c) it is provided that "a class action" of the type at bar "shall not be dismissed or compromised without the approval of the court." Thus the Court is in a posture quite different from that which exists in an ordinary litigation in, say, for example, contract or tort, where the traditional view is that the judge merely resolves issues submitted to him by the parties, asks only such questions as clarify the contentions of the litigants, and stands indifferent when the parties, for whatever reason commends itself to them, choose to settle a litigation. Compare Note, 73 Law Quarterly Review 284-286.

In compromises of class actions, such as minority stockholders' suits, the District Court has been placed by higher authority in the role of what has been called "a third party to the compromise" (*Masterson* v. *Pergament,* 6th Cir., 203 F. (2d) 315, 330, col. 2, 9 lines from bottom of the page), and what might perhaps be better called *a guardian of absent parties and of the corporation as a whole.* Cf. *Piccard* v. *Sperry Corp.,* S. D. N. Y., 36 F. Supp. 1006, 1009-1010, aff'd per curiam 2nd Cir., 120 F. (2d) 328; *Upson* v. *Otis,* 2nd Cir., 155 F. (2d) 606, 614-615; *Birnbaum* v. *Birrell,* S. D. N. Y., 17 F. R. D. 409, Note 71 Harv. L. Rev. 874, 953, note 583. Moore's Federal Practice vol. 3, 3551-3560. The silence or the absence of shareholders does not relieve the judge of his duty. Indeed it may charge him with an added responsibility, at least in cases where the facts proved in his court and others revealed in

[fol. 2250] other public tribunals strongly suggest that wrongs were done to the corporation for which extensive reparation may be due. Cf. Note, 54 Harv. L. Rev. 833, 838-839.

Just such responsibility arises here. If (and the word "if" should be underlined) the defendant Bernard Goldfine used a check bought with funds or credits of one of these corporations in such a way as to produce a profit, or like financially measurable advantage, for himself, or a confederate to whom the check was lent or by whom it was cashed, such profit or advantage may belong in equity to the corporation, and the assets available to shareholders might thereby be perceptibly increased. This is nothing but an exemplification of the general and familiar rules of constructive trusts. Scott on Trusts, 2nd ed., §503; Restatement, Agency §404; *Production Machine Co.* v. *Howe*, 327 Mass. 372, 378; Note 63 Harv. L. Rev. 1446-1448. 3, Fletcher, Cyclopedia of Corporations, §888.

This Court does not find it necessary to consider for what reasons lawyers who have appeared in court as counsel for the plaintiffs and intervenors chose not to make defendant Goldfine answer under oath what he knew about the cashiers' or certified checks. Of course, a particular plaintiff or his lawyer may have reasons peculiar to himself for not prosecuting such an inquiry. And it may be that inquiry along these lines was for some reason foreign to the powers vested in, principles governing, or interests represented by the SEC, U. S. Department of Justice, or local Massachusetts authorities. But, whatever may be the limitations others accepted, this Court, *on behalf of its wards*, the unrepresented stockholders, cannot approve a compromise settlement until the Court knows from what debts, and from what size claims, it is releasing defendant Bernard Goldfine and others. *Picard* v. *Sperry Corp.*, S. D. N. Y., 36 F. Supp. 1006, 1009-1010, aff'd per curiam, 2nd Cir., 120 F. (2d) 328. Cf. *Ladd* v. *Brickley*, 1st Cir.,

[fol. 2251] 156 F. (2d) 212, 215-220; *Upson* v. *Otis*, 2nd Cir., 155 F. (2d) 606, 614-615.

Hence this Court *will withhold its approval of the compromise settlement* now before it until defendant Goldfine files under oath a complete statement with respect to each cashier's check and each certified check of either of the defendant corporations. To be satisfactory such statement must cover all checks (whether or not defendant Goldfine personally handled them) and must cover all details of the use of the checks made by any holder thereof (whether or not he was an officer or employee of one of the defendant corporations).

The only sanction this Court is suggesting *at this time* is the withholding of its approval of the compromise. That is, the defendants run whatever risk there may be in a full trial, full interrogation, and full payment of whatever liabilities may be judicially ascertained thereafter. And the defendants also run the risk that in view of the reluctance of counsel of record to make inquiry about these checks, this Court will appoint a receiver, or will name a trustee, or will appoint a counsel for unrepresented shareholders, to make suitable investigation by deposition or other discovery proceedings and to bring such evidence as he uncovers before the Court in an appropriate manner. [Compare the appointment by Judge Ford of Bartholomew A. Brickley, Esq. in the *International Hydro-Electric System* case, reviewed in *Ladd* v. *Brickley*, 1st Cir., 158 F. (2d) 212, 214 col. 1 lines 11-14. See also *General Investment Corp.* v. *Warriner*, 259 App. Div. 400, 19 N. Y. S. 2d (566) (1st Dept.); 54 Harv. L. Rev. 833, 839.]

The defendant Goldfine is given until Friday, December 5, 1958 to supply the suggested information or to face as a consequence this Court's disapproval on that day of the proposed settlement.

[fol. 2252]

APPENDIX B

Calculation of Damages Based on Present Market Prices (January 8, 1959)

In April 1954 IDS Common Stock and Class A were both split five for one. The shares are presently quoted at $179 per share. Since the close of the hearings, each IDS share received stock of a Canadian subsidiary now worth $22, in a spin off giving the IDS share a value of $201 and a pre-1954 IDS share a value of $1005.

Alleghany Preferred Series A is presently quoted at $93 a share. Each share received during 1958 $151.25 accumulated dividends, giving pre-1958 shares a value of $244.25.

In the light of current market prices we consider the value of recovery of the respective claims.

(A) Rescission of the 1950 IDS Exchange

(i) *Complete rescission*

Alleghany receives from defendants 48,125 "pre-1954" shares of IDS Class A presently worth ($1005)	$48,365,625
Alleghany returns to defendants 4,840 shares of Alleghany Preferred Series A, presently worth ($244.25)	$ 1,182,170
Net recovery to Alleghany	$47,183,455

(ii) *Eliminating shares sold by Young in 1953*

In 1953 defendant Young sold 8251 shares of IDS Class A at $90 for a profit of $668,331. Eliminating those shares and the proportionate number of Alleghany Preferred Series A shares from the rescission, and adding in their place Young's 1953 profit, the transaction is:

[fol. 2253] Alleghany gets 39,149 pre-1954 shares of IDS presently worth ($1005) $39,344,745

Alleghany gives back 3915 shares of Alleghany Preferred Series A presently worth ($244.25) ..... $ 956,238

Alleghany gets Young's 1953 profit .... $ 668,331

Net recovery to Alleghany $39,056,838

(iii) *General Counsel's Theory*

General Counsel also eliminates the 12,000 IDS shares taken by Purcell from rescission. Under his theory, 27,149 shares of IDS Class A are returned to Alleghany against 2715 shares of Alleghany Preferred Series A. Alleghany also gets Young's 1953 profit as in (ii) above. At present prices the recovery to Alleghany on this limited basis is $27,289,937

(B) The Sale to Murchison Brothers in December 1953 of IDS Common and Class A Stock

(i) Using the current price of $1005 per share for IDS Common and Class A, recovery by Alleghany on the wrongful sale of 27,500 shares of Common and 5650 shares of Class A in December of 1953 (pre-split) at $125 a share has damaged Alleghany and profited the Murchisons by $29,172,000

(ii) During the hearings the price of IDS was $67.50 per share. Alleghany's damage and Murchison's profits were consequently ..... $ 7,044,375

[fol. 2254]

(C) The Sale to Carter of 45,000 Shares of IDS Common in December 1954

(i) Carter paid Alleghany $2,981,250 in notes for 45,000 shares of IDS Common (post split). At current market prices ($201) of IDS, net recovery to Alleghany on this claim would be	$ 6,063,750
(ii) At the time of the hearings the price of IDS was $67.50 and the value of recovery to Alleghany on this 45,000 share transaction was	$ 56,250

(D) Total Value to Alleghany of Recovery on All Claims to Be Compromised

At Time of Hearings (1955-56)

1. 1950 IDS Exchange (Rep. 63)	$15,000,000*
2. Young's and Kirby's profits on 200,000 shares of New York Central (*supra*, p. 42)	6,000,000
3. Murchison Brothers', Richardson's, Kirby's and Carter's profits on New York Central (*supra*, p. 42)	8,835,000
4. Murchison Brothers' profits on 33,150 shares of IDS taken from Alleghany in 1953 (App. B (B) (ii))	7,044,375
5. Carter's profits on 45,000 shares of IDS taken from Alleghany in 1954 (App. B (C) (ii))	26,250

* Eliminating from recission the IDS Class A shares sold by Young at $90 in 1953 and taking his profit of $668,331 instead, this figure would be $12,957,171. Under General Counsel's theory which also eliminates Purcell's shares from a rescission this item would be $8,600,000..

6. Alleghany's loss of IDS Control to the Murchisons in 1955	5,000,000
Total possible recovery	$41,935,625

[fol. 2255]

(E) Total Value to Alleghany of Recovery on All Claims to Be Compromised

At Present Time (January 1959)

1. 1950 IDS Transaction (App. B (A) (i))	$47,183,455*
2. Difference between Young and Kirby's purchase price of 200,000 shares of New York Central and the higher prices Alleghany was required to pay (*supra*, p. 43)	2,865,760
3. Profits to Kirby, Richardson, Murchison Brothers and Carter on New York Central stock (*supra*, p. 43)	2,135,000
4. Murchison Brothers' profit on 33,150 shares of IDS taken from Alleghany in December 1953 (App. B (B) (i))	29,172,000
5. Carter's profits on 45,000 shares of IDS taken from Alleghany in December 1954 (App. B (C) (i))	6,063,750
6. Alleghany's loss of control of IDS to the Murchisons in 1955	5,000,000
	$92,419,965

* Eliminating from rescission the shares sold by Young at $90 in 1953 and taking his profit of $668,331 instead, this figure would be $39,056,838. Under General Counsel's theory which also eliminates Purcell's shares from a rescission this item would be $27,289,937.

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT No. K-85

(See opposite) ☞

[fol. 2256]

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POMERANTZ LEVY & HAUDEK
ATTORNEYS AT LAW

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CABLE ADDRESS "POMLAWS" N. Y.

December 23, 1959.

Satterlee Warfield & Stephens, Esqs.
460 Park Avenue
New York 22, N. Y.

Atten: F. W. H. Adams, Esq.

Re: Sadie Zenn, et al. vs.
J. J. Anzalone, et al.

Gentlemen:

This is to confirm my statement to you yesterday that I reject your effort to cancel your settlement agreement as you state you propose to do in your letter of December 23, 1959.

I see absolutely no basis in fact or in law for such a rescission of an agreement made by your clients, accepted by the corporation and by ourselves, and acted on by the court. The mere fact of the resistance to such settlement by Mr. Graubard and his non-approval of our settlement is in our judgment no reason for your clients backing down. We would regard it both as a breach of contract and as a breach of faith with the court were your clients now to attempt to cancel their settlement agreement at this late stage.

Very truly yours,

POMERANTZ LEVY & HAUDEK

BY: _____
General Counsel for Plaintiffs

ALP:ER
By Hand

cc: Lord, Day & Lord, Esqs.

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IN THE UNITED STATES DISTRICT COURT
DEFENDANT EXHIBIT No. K-137

Supreme Court of the State of New York

COUNTY OF NEW YORK

SADIE ZENN, FREDA BLUMENTHAL, HENRY MENCHER, ABRAHAM L. FISTEL, JEANNETTE ANNENBERG, BERNARD LIEBERMAN, NICHOLAS SCHEPIS, JACOB HAIMOWITZ and FRANCES KOENIG,

Plaintiffs,

against

J. J. ANZALONE
FRANK B. BATEMAN
O. HENRY BRIGGS
THOMAS J. DEEGAN, JR.
WALTER W. FOSKETT
HENRY J. GUILD
ALLAN P. KIRBY
HERMAN R. NEFF
CLINT W. MURCHISON
BROOKS POTTER
R. W. PURCELL
SIDNEY W. RICHARDSON
RADCLIFFE SWINNERTON
ANDREW VAN PELT

Index No 7244/54.

ANITA O'KEEFE YOUNG, as Executrix under the Last Will and Testament of Robert R. Young, deceased,

CLINT W. MURCHISON, JR. and JOHN D. MURCHISON, individually and as partners, doing business under the firm name and style of MURCHISON BROTHERS,

CHESAPEAKE INDUSTRIES, INC., NEW YORK CENTRAL RAILROAD COMPANY and ALLEGHANY CORPORATION,

Defendants.

REPORT OF REFEREE

TO THE JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK:

I, the undersigned, Robert J. Fitzsimmons, herewith submit my report in the above entitled matter pursuant to

[fol. 2258]

an order of appointment made at Special Term, Part I of this Court on the 18th day of August, 1955, by Hon. Owen McGivern.

By the provisions of said order I was directed to inquire on the merits into the fairness, reasonableness and adequacy of a stipulation of settlement dated July 25, 1955, and to report as to whether such proposed settlement should be approved and confirmed.

Pending the coming in of my report, this Court has held in abeyance decision on the motion of the defendant Alleghany Corporation for an order approving the proposed settlement and directing the entry of an appropriate judgment carrying the settlement into effect.

After service upon me of a certified copy of the order of appointment, I duly qualified to act by executing my statutory oath of office, which said oath is annexed to the transcript of the testimony on this reference now on file with the Clerk of this Court.

By the terms of the order of reference this Court directed Alleghany Corporation to send notice of the hearings to all stockholders, advising them of the proposed settlement and notifying them to attend and be heard. A notice in the form approved by this Court was mailed to all stockholders of record of Alleghany on August 23rd, 1955 (Exhibit 2).

Hearings commenced on September 19th, 1955, and continued thereafter over a period of 35 days, until January 20th, 1956. The parties requested an opportunity to submit briefs at the close of the hearings and additional time for this purpose was granted until May 29th, 1956. Extensive briefs, which have been of immeasurable aid to the Referee in making his report herein, were submitted.

Thereafter many significant developments took place which made it appropriate to withhold submission of my report. These subsequent developments included settlement negotiations entered into between counsel for the parties in Breswick, *et al. vs.* Briggs, *et al.*, now pending

in the District Court of the United States, Southern District of New York, and involving substantially similar causes of action.

These settlement negotiations were conducted by the parties at the suggestion of Federal Judge Lawrence E. Walsh, before whom certain motions hereinafter discussed were made in the Breswick case, which motions are still pending undecided.

During the course of these settlement negotiations, counsel for defendants in the Breswick case, who also represent the defendants in the case at bar, made settlement offers in excess of the amounts offered in the proposed settlement submitted to the undersigned for recommendation and report to this Court.

In addition to these settlement negotiations, litigation was *sub judice,* involving Alleghany Corporation's alleged obligation to register with the Securities and Exchange Commission under the provisions of the Investment Company Act during the period in which some of the transactions involved in the Complaint herein took place. This question, which may affect the evaluation of certain of the causes of action herein, was involved in an action brought before a statutory three-judge Court in the United States District Court for the Southern District of New York. The decisions in that three-Judge Court case are reported as follows: Breswick & Co. *v.* United States, 134 F. Supp. 132 (1955), granting a preliminary injunction; Breswick & Co. *v.* United States, 138 F. Supp. 123 (1955), granting permanent injunction; Alleghany Corporation *v.* Breswick & Co., 353 U. S. 151 (1957), reversing the last mentioned decision; Breswick & Co. *v.* United States, 156 F. Supp. 227 (1957), continuing the permanent injunction; Alleghany Corporation *v.* Breswick & Co., 355 U. S. 415 (1958), reversing the last mentioned decision; Breswick & Co. *v.* United States, 160 F. Supp. 754 (1958), lifting the injunction and dismissing the action. Pertinent is also a decision of the United States District Court for the Southern District of New York in Schwartz *v.* Bowman, 156 F. Supp. 361 (1957).

[fol. 2260]

Numerous stockholders of Alleghany appeared in person or by counsel during the course of the hearings before me, and other stockholders wrote and expressed their approval or disapproval of the settlement. Vigorous opposition to the settlement developed during the conduct of the hearings. As a result, the hearings became truly an adversary proceeding, more nearly resembling a trial on the merits than a hearing on the adequacy of a proposed settlement, in which a total of 18 witnesses were called; 7 by the proponents of the settlement and 11 by the objectants. Some 480 Exhibits, many of them voluminous documents, were marked in evidence and some 4600 pages of testimony were taken.

Twenty-two separate law firms and attorneys appeared on the hearings, causing counsel for proponents to assert that never in the history of stockholder litigation has there been such an exhaustive, sustained and detailed examination of a proposed settlement.*

The subject matters at the hearings included not only the merits and demerits of the claims to be settled and the value of the proposed settlement to Alleghany Corporation but also the collateral question raised by the objectants as to whether the settlement had been negotiated at arm's length, in good faith, and whether general counsel for the plaintiffs was sufficiently apprised of the factual and legal issues involved at the time the settlement was made.

Before reviewing the Complaint, the stipulation of settlement, the proposed amended settlement and the arguments of both proponents and objectants, I shall discuss briefly the parties to this litigation.

Defendant Alleghany Corporation was organized in Maryland (Exhibit 11). Its principal business is the investment of its funds in railroad and other securities.

Defendants Robert R. Young and Allan P. Kirby since 1937 have been respectively the Chairman of the Board of Directors and the President of Alleghany Corporation (pages 2291-2293). Defendant Robert R. Young died on

* See Appendix for list of appearances of counsel.

January 25, 1958 and his executrix, Anita O'Keefe Young, was duly substituted as a defendant in his place by order of this Court of June 24, 1958.

Defendants Clint W. Murchison and Sidney W. Richardson are wealthy oil industrialists in Texas, who engaged in some of the transactions with Alleghany Corporation that give rise to this litigation (pages 427, 491, 960, 1059).

Defendants Clint W. Murchison, Jr., and John D. Murchison are the sons of Clint W. Murchison and members of a partnership known as Murchison Brothers, which likewise engaged in certain transactions with the defendant Alleghany Corporation that are questioned in this litigation (pages 420-421).

The defendant Chesapeake Industries is an Ohio corporation, in which the defendants Young and Kirby have interests (pages 1300-1301; page 2404; Exhibit 278).

Defendant New York Central Railroad Company is a railroad corporation organized in New York and in other States. It is only a nominal defendant since no relief is asked against it.

The other defendants in this litigation are present and past directors and officers of the defendant Alleghany Corporation.

The plaintiffs are individual stockholders of Alleghany Corporation, suing in the derivative right of the Company. Their status as stockholders has been established (pages 276, 452, 468, 477; Exhibits 5-10). Some of them have owned their stock continuously since prior to the time of the earliest transaction alleged in the Complaint so that the requirements of Section 61 of the General Corporation Law are met.

Claims Alleged in the Complaint.

The Complaint now before this Court is the result of the consolidation of ten stockholders' actions brought on behalf of Alleghany Corporation. Eight of these actions were

[fol. 2261]

commenced in April and May, 1954 (Exhibit 218) and were consolidated by an order of Mr. Justice Brady of this Court on June 7th, 1954, whereby Pomerantz, Levy & Haudek, Esqs., were appointed general counsel for the plaintiffs (Exhibit 441).

Two additional actions, brought in May, 1955, were thereafter consolidated with this action by an order of Mr. Justice Gavagan, dated May 27, 1955 (Exhibit 441).

During the course of the settlement hearings an order was entered by Mr. Justice Saypol on October 31st, 1955, permitting three additional stockholders to intervene as party plaintiffs in this action (Exhibit 451).

The consolidated amended complaint contains eight causes of action, which have been carefully and completely detailed in the briefs of the respective parties from which the following summary is adopted. To prevent confusion, the synopsis which follows departs from the Complaint in some few instances in order to review certain facts developed on the hearings, principally by documentary evidence.

THE FIRST CAUSE OF ACTION.

IDS Transaction of 1950.

The Complaint demands rescission of certain exchange transactions (or in the alternative an accounting by the individual defendants) which allegedly resulted in a loss to Alleghany.

These exchange transactions were:

(a) The transfer on May 15, 1950 by defendant Kirby to Alleghany of 2,420 shares of Alleghany's preferred stock, Series A, for 24,062 Class A shares of Investors Diversified Services, Inc. (IDS) and $27.79 cash. This exchange had been authorized pursuant to a prior resolution of the directors of Alleghany, fixing the exchange at the market price of

the Alleghany stock and at the market price or cost to Alleghany, whichever was higher, of the IDS Class A stock. This resolution of the Board of Directors of Alleghany was subsequently approved and adopted by the stockholders at the annual meeting of May 15, 1950.

(b) The transfer on May 23, 1950 by defendant Young of 2420 shares of Alleghany's preferred stock, Series A, for 24,063 Class A shares of IDS stock, plus $19.65, which exchange was similarly authorized by a resolution of the Board of Directors of Alleghany Corporation, subsequently approved and adopted by the stockholders at the annual meeting of May 15, 1950.

In so far as both exchange transactions are attacked in the first cause of action, the Complaint seeks rescission on the ground that the proxy statement for the stockholders' meeting contained false and misleading statements, to the knowledge of the individual defendants, consisting of a lack of information concerning earning developments of IDS which reflected a trend to further improvements and an increase in market value foreseeable and foreseen by the individual defendants.

It is further claimed that a majority of the stockholders' votes were cast by management proxies procured through misleading proxy statements and were therefore void, rendering the exchange transaction void.

The Complaint contains an alternative basis for relief by way of damages. It is alleged that the price paid by Young and Kirby for the IDS stock in the form of exchange of Alleghany preferred stock fell short of the contractually required amount by approximately $290,000.

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SECOND CAUSE OF ACTION.

The New York Central Transaction and Related Charges.

The Complaint demands an accounting by the individual defendants for losses claimed to have been suffered by Alleghany and the profits realized by the defendants in connection with the acquisition of control of the New York Central Railroad.

The alleged acts of the defendants complained of in the second cause of action are as follows:

The IDS Transaction of 1953.

Young and Kirby in December, 1953, caused Alleghany to sell to Murchison Brothers 27,500 common shares and 5,650 non-voting Class A shares of IDS, at $125 per share, for an aggregate price of $4,143,750. The price and the other terms of the sale, namely, a 4 per cent note of the purchasers payable over five years for the full amount of the purchase price, were allegedly unduly favorable to the Murchisons. It is claimed that they were granted these bargain purchases in order to enlist them as participants in the transactions hereinafter described, which were allegedly entered into pursuant to a conspiracy among the individual defendants.

The Purchases of Central Stock by Young and Kirby.

Young and Kirby in December, 1953, and January, 1954, each purchased 100,000 Central shares in the market. Although Young and Kirby expected the market value of Central stock to rise by reason of the forthcoming proxy contest with the incumbent management of the Central,

they did not permit Alleghany to make a similar investment in Central stock but restricted its investment to some 11,000 shares. They subsequently caused Alleghany to commit its funds to the proxy contest in order to render their private investment in the Central stock more valuable.

Alleghany's Sale of Its C & O Stock.

Young and Kirby in January, 1954, caused Alleghany to sell its entire holdings of Chesapeake & Ohio stock, comprising some 104,854 shares, to Cyrus Eaton, an investment banker of Cleveland, Ohio. The Complaint alleges that the price which Alleghany received for these shares was insufficient and that the sale was made solely to enable Alleghany to participate in the acquisition of control of the Central Railroad. Under orders of the Interstate Commerce Commission then outstanding, Alleghany would have been forbidden to acquire control of Central as long as it remained connected with the Chesapeake & Ohio.

The Acquisition of 800,000 Central Shares by Murchison and Richardson and Their Financial Arrangements With Alleghany.

The Board of Directors of Central, on February 10th, 1954, rejected a request of Young and Kirby to be appointed members of the Board. Young and Kirby, with Alleghany, then announced their intention to engage in a proxy contest with the Central management. An important factor in any such contest would be the voting rights inherent in the 800,000 shares of Central stock owned by the Chesapeake & Ohio. This block constituted 12½ per cent of the Central's outstanding stock and pursuant to order of the I. C. C. had been placed with the Chase National Bank of New York under an agreement which conferred the right to vote these shares on the Chase National Bank so long as

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the Central shares were owned by the Chesapeake & Ohio. Young and Kirby were apprehensive that these 800,000 shares would be voted in the anticipated proxy contest in favor of the incumbent management of the Central. It is alleged that at Young's instigation defendants Murchison and Richardson purchased these 800,000 Central shares from the Chesapeake & Ohio, at $25 per share, for an aggregate price of $20,000,000.

Alleghany, under agreement dated March 15th, 1954, financed this purchase to the extent of $7,500,000 by lending this amount to Murchison and Richardson, and further granted options to them to sell 400,000 Central shares to Alleghany at their cost price of $25 per share. The defendant Kirby granted an additional loan of $5,000,000 to Richardson, who also was given an option to sell 200,000 Central shares to Kirby at his cost price of $25 per share. Murchison and Richardson obtained the balance of their financing ($7,500,000) from the Central National Bank in Cleveland, by means of a loan which Young was allegedly instrumental in arranging.

Proxy Contest with the Central Management.

The Central stockholders at their May 26th, 1954 meeting elected the so-called Alleghany-Young-Kirby slate of candidates and replaced the previous directors. Young became Chairman of the Central Board and Kirby, Murchison and Richardson were among the newly elected directors. Their election culminated an extensive advertising and publicity campaign to procure stockholders' proxies. The expenses of the campaign allegedly amounted to $1,369,775 and were paid entirely from the funds of Alleghany Corporation.

The Complaint alleges that Alleghany had no bona fide reason for undertaking the payment of these expenses and that they were incurred solely in the personal interest of Young, Kirby, Murchison and Richardson.

The July 15th 1954 Arrangements Between Alleghany, the Murchisons and Richardson.

As already stated, Alleghany and Kirby, under their written agreement with Murchison and Richardson, dated March 15, 1954, had granted options exercisable between July 15th and September 15th, 1954, pursuant to which they could have been obligated to buy back Central stock at $25 per share. The loans which Alleghany and Kirby had granted to Murchison and Richardson were repayable on or about September 15th, 1954.

After these financial arrangements had been made public, the eight original actions herein were commenced in April and May, 1954, and attacked the written agreement of March 15th, 1954. Thereafter and under date of July 15th, 1954, Alleghany and Kirby entered into a series of agreements with the Murchisons and Richardson which changed the March 15th, 1954 arrangement. Under the July 15th, 1954 arrangement, Alleghany purchased 300,000 Central shares from the Murchisons and Richardson at $25 per share. Alleghany placed these 300,000 shares into joint ventures with Murchison Brothers and Richardson, who contributed the same number of shares to the joint venture. Alleghany was to have half the profits and a guarantee against any loss.

Alleghany was given the privilege to vote all the 600,000 shares held in the joint ventures and the right to pledge such shares as collateral for any indebtedness it may have or might incur. At the same time Kirby purchased 200,000 shares of Central stock from Richardson at $25 per share.

The Modification of the Loss Guarantee Given by Murchison Brothers to Alleghany.

The loss guarantee provided by the contract of July 15th, 1954 protected Alleghany against any loss it might suffer in the aggregate from all of its joint ventures with

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Murchison Brothers. In other words, any loss on the Central joint venture would be offset by profits on other ventures before the guarantee could become effective. During the years prior to 1954, Alleghany had entered into a series of similar joint ventures.

By a contract of November 30th, 1954, Murchison Brothers agreed that the loss guarantee on the Central venture would be treated independently of all other joint ventures between Alleghany and Murchison Brothers and that the guarantee would become effective if Alleghany should suffer a loss from its joint ventures in Central stock, regardless of profits realized from other ventures.

The Option on 135,000 Central Shares.

Murchison Brothers on December 13th, 1954 granted Alleghany an option to buy 135,000 Central shares, comprising, with the exception of 15,000 shares, all the Central stock of Murchison Brothers involved in their joint ventures with Alleghany. One-third of the option was exercisable at $25 per share, the second one-third at $30 per share and the last one-third at $35 per share. Alleghany thereafter exercised the option and Murchison Brothers derived a $675,000 profit therefrom.

The IDS Transaction of 1954-1955.

Alleghany, in December, 1954, agreed to sell to Murchison Brothers 55,000 common shares of IDS at $85.57 a share, and agreed to exchange with Murchison Brothers 130,000 common voting shares of IDS for 130,000 non-voting class A shares of IDS. Thereafter, in April, 1955, the exchange of the voting for non-voting shares was carried out but the sale of the 55,000 voting shares was abandoned.

The Complaint alleges that the voting stock was more valuable than the non-voting stock and that Alleghany was

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harmed by the exchange. It is alleged that the favorable exchange was granted to Murchison Brothers as a further reward for their help in the Central proxy fight.

THE THIRD CAUSE OF ACTION.

Violation of the Investment Company Act.

The Complaint alleges that Alleghany became an investment company on January 19th, 1954, when it divested itself of its controlling interest in the C & O.

It is alleged that Alleghany, from January 19th, 1954 to the date of the Complaint, refrained from registering with the Securities and Exchange Commission as an investment company, and that by reason thereof all of the transactions referred to in the second cause of action violated Section 7(a) and other provisions of the Investment Company Act, and were void under Section 47 (f) of the Act. The individual defendants, by reason of these violations, of which they allegedly had full knowledge, are said to be accountable to Alleghany for its losses and their profits.

It is further alleged that in 1954, Alleghany sold a substantial number of its non-railroad securities at a book loss, and that Young and Kirby caused these sales so as to make it appear that Alleghany was essentially a carrier and properly under the I. C. C. jurisdiction rather than that of the S. E. C.

THE FOURTH CAUSE OF ACTION.

Loss of Corporate Opportunity by Alleghany In Connection With the New York Central Transaction.

The Complaint alleges that in January, 1954, Alleghany had the corporate opportunity to acquire the 800,000 shares of Central stock owned by the C & O, and 200,000 shares of Central stock which Young and Kirby purchased on the

open market with their own money in December, 1953 and January, 1954. It is alleged that Alleghany had the resources to make these purchases and that it was the duty of the individual defendants not to compete with Alleghany in the acquisition of such stock or to divert from it any opportunity to purchase the stock.

The following transactions, largely duplicatory of the second cause of action, are asserted to have created equitable trusts for the benefit of Alleghany:

(A) The purchase on the open market of 200,000 shares of Central by Young and Kirby.

(B) The acquisition by Kirby, Young, Murchison and Richardson of "⅝ths of Alleghany's opportunity to acquire at $25 a share the 800,000 shares of New York Central stock held by C & O."

The Complaint then recites the facts of the July 15th, 1954 agreements, to which reference has been made in the preceding summary of the second cause of action.

(C) Alleghany's purchase, pursuant to options, of 135,000 shares of New York Central stock held in the joint venture "at a profit to the Murchison defendants and Richardson of $675,000."

The Complaint asks that the joint venture agreements, the options and the exercise thereof be voided and that Alleghany be declared the sole owner of the 600,000 shares held in the joint ventures, of the 200,000 shares acquired in the open market by Kirby and Young, and of the 200,000 shares acquired by them from the Murchisons and Richardson, subject only to reimbursement of the cost thereof less dividends.

THE FIFTH CAUSE OF ACTION.

Alleghany's Preferred Stock Exchange.

Alleghany, pursuant to authorization of its stockholders, on February 10th, 1955, offered to exchange 136,744 shares of its 5½ per cent Series A preferred stock then outstanding for new convertible preferred stock. The offer was subject to the approval of the I. C. C., which was granted by an order of June 22nd, 1955 (Exhibit 189).

The exchange was thereupon carried out in part. Further action, however, was restrained by decision of a three-Judge statutory Federal Court, which ultimately vacated the I. C. C. order (Exhibits 179, 361).

The decision of the three-Judge statutory Federal Court, subsequent to the close of the initial set of hearings herein, was reversed by the Supreme Court of the United States (Alleghany Corporation *v.* Breswick & Co., 353 U. S. 151). The three-Judge Court, upon the remand, continued the injunction against the exchange of Alleghany's preferred shares (Breswick & Co. *v.* United States, 156 F. Supp. 227), but the United States Supreme Court again reversed and remanded (Alleghany Corporation *v.* Breswick & Co., 355 U. S. 415). Following this second remand, the three-Judge Court lifted the injunction and dismissed the action (Breswick & Co. *v.* United States, 160 F. Supp. 754). The exchange of the new for the old preferred stock of Alleghany was thereupon carried out.

The Complaint in the case at bar alleges that the terms of the proposed exchange were detrimental to Alleghany's common stockholders and that the exchange was illegal in that it had not been approved by the S. E. C., as required, if plaintiffs' contention is correct that Alleghany from January 19th, 1954 was subject to the Investment Company Act.

The Complaint demands an injunction against the proposed exchange and an accounting by the defendants of

Alleghany's costs and losses and of the individual profits derived by the defendants from the proposed exchange.

With respect to the aforesaid offer of exchange, the settlement agreement now before the Court is expressly without prejudice to whatever ruling may be made on that subject by any Federal Court or administrative agency. The release for which judicial approval is sought, however, would discharge the defendants from any personal liability for the expenses incurred by Alleghany with respect to the proposed exchange of stock as well as any individual profits they may have derived therefrom.

THE SIXTH CAUSE OF ACTION.

Diversion of Corporate Opportunities.

Young and Kirby are charged with diverting to themselves various corporate opportunities rightfully belonging to Alleghany. These opportunities may be summarized as follows:

(A) Exchanges of Alleghany preferred stock.

Alleghany from time to time since 1946 has invited the holders of its Series A preferred stock to tender their shares to Alleghany in exchange for cash or specified securities.

The Complaint alleges that defendants Young and Kirby and the members of their families purchased Alleghany's preferred stock in the market with advance information of such subsequent invitations, and thereafter tendered and resold the stock so purchased to Alleghany at a profit.

(B) The Edmonton Shopping Center.

The Complaint alleges that at various times from 1946 to date, Alleghany was afforded the opportunity of acquiring securities in corporations controlling shopping centers

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in Canada and elsewhere. Defendants Young and Kirby and members of their families allegedly appropriated these corporate opportunities for their individual benefit and derived substantial profits therefrom. Particular reference is made to a shopping center in Edmonton, Canada, in which the defendant Young invested.

(C) Acquisitions by Chesapeake Industries, Inc.

The Complaint charges that Young, Kirby and the Murchisons have substantial interests in an Ohio corporation known as Chesapeake Industries, Inc. Young, it is alleged, diverted from Alleghany the opportunity to acquire a number of corporations, as listed in paragraph 86 of the Complaint, and procured the stock of these corporations for Chesapeake Industries, Inc.

It is alleged that all of these investments resulted in substantial profits for which Chesapeake Industries, Inc., Young, Kirby and their families are liable.

THE SEVENTH CAUSE OF ACTION.

The Industrial Brownhoist Transaction.

Alleghany, prior to July 14th 1953, owned a substantial block of stock of Industrial Brownhoist Corporation. Alleghany sold that stock on July 14th, 1953 to Pennsylvania Coal & Coke Corporation. Under an agreement of sale, Pennsylvania Coal & Coke paid a broker's commission of $111,995.50 to Chesapeake Industries. The Complaint alleges that Chesapeake actually performed no services for Alleghany in the sale of the Brownhoist stock, and that the commission paid to it was in fact part of the purchase price and was improperly diverted from Alleghany to Chesapeake Industries.

THE EIGHTH CAUSE OF ACTION.

Sale of Portsmouth Steel Stock to Defendant Herman R. Neff.

Alleghany, in 1952, sold to one of its directors, Herman R. Neff, 5,000 shares of the common stock of Portsmouth Steel Corporation, at $13.50 per share, for an aggregate price of $67,500. Neff paid for the stock by his personal promissory note in the full amount of the purchase price and pledged the shares with Alleghany as security for the payment of the note. It was expressly agreed that Neff was under no personal obligation to pay the note. The Complaint alleges that the transaction constituted a gift to Neff of a valuable asset belonging to Alleghany.

HISTORY OF THE LITIGATION.

In April and May, 1954, at about the time the eight original actions in this Court were commenced, a number of actions very similar in character were instituted in the United States District Court for the Southern District of New York, by largely the same plaintiffs (Exhibit 218).

These Federal Court actions were consolidated by orders of the District Court entered May 17th, 1954 and May 19th, 1954; and Pomerantz, Levy and Haudek were appointed general counsel for the Federal Court plaintiffs (Exhibit 440), as they were likewise appointed general counsel in the State Court.

The consolidated action in the Federal Court is entitled "Zenn *vs.* Anzalone, *et al.*," (Civil No. 92-205).

The complaints in the State Court actions (Exhibit 309), before final consolidation in the present form, were somewhat more comprehensive than the companion cases in the Federal Court, at least in the following particulars:

The action instituted by plaintiff Meneher in the State Court on April 23rd, 1954, in addition to attacking the loans and options to the Murchison interests and the involvement of Alleghany in the proxy fight, also attacked the commission paid the Chesapeake Industries (the seventh cause of action in the consolidated amended complaint), and the sale of 5,000 shares of common stock of Portsmouth Steel Corporation to Herman R. Neff (the eighth cause of action in the consolidated amended complaint).

The action entitled "Schepis vs. Briggs," instituted in the Supreme Court of Kings County on April 9th, 1954, charged that Alleghany became subject to the Investment Company Act in January, 1954, and that, notwithstanding, defendants Young and Kirby caused Alleghany to refrain from registering with the S. E. C. in accordance with the requirements of that Act.

The Schepis complaint demanded that the purchase by Alleghany Corporation of New York Central stock be declared in violation of the Investment Company Act, and for the benefit of defendants Young and Kirby, and that defendants Young and Kirby should be held to be the owners of such stock and required to reimburse Alleghany therefor.

On February 14th, 1955, two stockholders of Alleghany, Breswick & Co. and Myron Neisloss, commenced another derivative action in the United States District Court for the Southern District of New York (Civil No. 98-371). The plaintiffs filed amended complaints in April and in May, 1955. The attorneys for the plaintiffs were Rosston, Hort & Brussel (Exhibit 312).

The amended complaint in that action generally set forth the same alleged facts contained in the State Court actions relating to Alleghany's acquisition of control of the Central.

The Breswick Complaint, however, strongly emphasized the alleged violation of the Investment Company Act by Alleghany. The Breswick Complaint also included

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the IDS transaction of 1954-1955 and the option on 135,000 Central shares. These matters, which occurred subsequent to the filing of the eight original Complaints in the State Court actions in April and May, 1954, were not asserted in this Court until the consolidated amended complaint herein was filed in May 1955; but the evidence discloses that general counsel for the plaintiffs in this case did notify counsel for defendants on January 21st, 1955, prior to the commencement of the Breswick derivative action, of their intention to investigate these matters (Exhibit 462).

The new matters alleged in the Breswick Complaint were the proposed exchange of Alleghany's 5½ per cent preferred stock for a new 6 per cent issue, and the alleged diversion of corporate opportunities belonging to Alleghany.

The Breswick Complaint did not include the IDS transaction of 1950, the Brownhoist transaction and the Neff transaction.

The Breswick plaintiffs, in addition to their derivative action, actively litigated certain other matters relating to the exchange of Alleghany's preferred stock, which is the basis of the fifth cause of action in the consolidated amended complaint in this Court.

In the Fall of 1954, Alleghany instituted proceedings before the I. C. C. to establish *inter alia* that it was a carrier, subject to the Interstate Commerce Act, by reason of its control of Central (Exhibits 174-175).

Alleghany commenced additional proceedings in February, 1955, before the I. C. C. to obtain approval of a proposed exchange of its 5½% Series A preferred stock for new convertible preferred stock. The I. C. C. granted the applications of Alleghany, by orders dated March 2nd and May 24th, May 26th and June 22nd, 1955 (Exhibits 175-177, 188-189).

Breswick & Co. had intervened in these proceedings and opposed the applications. Upon the entry of the I. C. C. June 22nd, 1955 order, Alleghany promptly commenced the proposed exchange of old for new preferred

stock. Breswick & Co., along with Randolph Phillips, commenced an action in the United States District Court for the Southern District of New York, to have the I. C. C. orders set aside, and obtained a temporary restraining order prohibiting further exchange. A statutory three-Judge Court, on July 21st, 1955, issued a temporary injunction against the enforcement of the I. C. C. orders, upon the ground that Alleghany was subject to S. E. C. rather than I. C. C. jurisdiction, having returned to investment company status as a result of having sold off its stockholdings in the C & O (Breswick & Co. *vs.* U. S., 134 F. Supp. 132; Exhibit 179).

The three-Judge statutory Court, on November 18th, 1955, rendered its decision making the injunction permanent (Exhibits 361, 455-456).

Subsequently, on April 22nd, 1957, on appeal by Alleghany and others, the United States Supreme Court reversed the three-Judge Court's decision (353 U. S. 151). There followed, as previously mentioned, a further injunction decision of the three-Judge Court (156 F. Supp. 227), its reversal by the United States Supreme Court (355 U. S. 415), and the ultimate dismissal of the action by the three-Judge Court (160 F. Supp. 754).

Apart from the Breswick derivative action and the three-Judge Court action, two further State Court derivative actions were brought, the so-called Koenig action on May 1st, 1955, and the Annenberg action on May 17th, 1955. These cases were consolidated with the present action on May 27th, 1955.

In addition, a number of derivative actions have been brought since May, 1955, in the United States District Court for the Southern District of New York (Annenberg *v.* Chesapeake Industries, Civil No. 100-364; Monheit *vs.* Anzalone, Civil No. 101-155; Brown *v.* Briggs, Civil No. 101-256; Eisenberg *v.* Neff, Civil No. 102-318).

A motion to consolidate some of these suits with Zenn *vs.* Anzalone, made by the defendants, was denied without prejudice by Judge Walsh in a decision dated September

28th, 1955 (Exhibit 411-A). An additional action (Kelly *vs.* Young) is also pending in the United States District Court for the District of Rhode Island (Exhibit 386).

The Breswick plaintiffs, following the issuance of the temporary injunction by the three-Judge statutory Court, on July 21st, 1955, restraining the exchange of old for new preferred stock of Alleghany Corporation, and following the announcement of the settlement now offered for approval in this action, moved in the Federal Court in their derivative action for summary judgment and for an order enjoining the parties from proceeding with settlement hearings in this Court. They contended that all information as to the proposed settlement had been withheld from them; that they had been deprived of the opportunity to participate in the settlement negotiations; and that the settlement was collusive and not executed in good faith. This motion was decided by Judge Walsh in the Federal District Court on September 28th, 1955, and an order entered thereon or October 27th, 1955. Judge Walsh denied the motion for summary judgment and refused to enjoin the settlement hearings in this Court. He did, however, find that the Breswick plaintiffs were improperly excluded from the settlement negotiations, and he enjoined the defendants from pleading as a defense in the Breswick *vs.* Briggs Federal Court action any judgment in this Court approving the proposed settlement (135 F. Supp. 397, Exhibit 411-A).

Subsequent to the close of the initial set of hearings on this reference, the defendants in the Breswick *vs.* Briggs case in the Federal Court moved, in March, 1956, for vacatur of the injunctive provisions of the Federal Court order dated October 27th, 1955, on the ground *inter alia* that the order had been improvidently made. Following oral argument on March 26th, 1956, Judge Walsh reserved decision and suggested that settlement of the entire litigation be discussed. A series of conferences between counsel for the parties took place in the period from April 11th, 1956 to July 10th, 1956. No agreement of settlement was reached.

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Defendants in the Breswick *vs.* Briggs case thereafter, on September 11th, 1956, supplemented the original motion to vacate the order of October 27th, 1955, on the further ground that because they had conducted settlement negotiations with the Breswick plaintiffs since the entry of the order at which various offers of settlement in excess of the offer accepted by general counsel for plaintiffs in the State Court action had been made, the reasons for the entry of the order no longer existed. Judge Walsh reserved decision on this motion and appointed me as Special Master in the Federal Court action, to hear and report on whether the injunction order, dated October 27th, 1955, "should be vacated or modified by reason of any and all matters which have taken place since October 27, 1955, including, without limitation, however, the details of the aforesaid settlement negotiations between plaintiffs and defendants."

I held hearings as Special Master in the Federal Court action between October 30th, 1956 and November 16th, 1956. My report was held in abeyance pending judicial determination of the litigation in Breswick *vs.* United States, previously discussed, and is being submitted simultaneously with the submission of this report.

In my report as Special Master to the Federal Court, I have recommended that the District Court vacate its order dated October 27th, 1955, by reason of the defendants' good faith in the settlement negotiations with the Breswick plaintiffs that have taken place between April and July, 1956.

Continuing with the chronology of the events in this litigation, we note that in the Fall of 1955, one of the objecting stockholders to the proposed settlement here, Samuel Rosen, made two motions to this Court while the hearings were in progress. In both motions he attacked the jurisdiction of this Court to pass upon the settlement of the first cause of action, namely, the 1950 IDS transaction, claiming that the essence of this cause of action is a violation of the Securities Exchange Act, with respect to which exclusive jurisdiction resided in the Federal Court.

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He also attacked the order of reference as having been secured by fraudulent and improper means and requested that it be vacated. This Court denied both motions. Rosen appealed from the second order, bringing up both grounds for reversal. The Appellate Division affirmed (1 App. Div. 2nd 662, 146 N. Y. S. 2d 286). With respect to the second aspect of the motions, the Court held that exclusion of the Breswick plaintiffs from the settlement negotiations would render the settlement unfair only if that exclusion adversely affected the amount obtained (Exhibit 411).

The Stipulation of Settlement.

After commencement of the eight original suits consolidated into this action, certain corrections and modifications were made by the defendants in the March 15th, 1954 agreements, which were attacked in these suits. These corrections and modifications were thereafter incorporated in and made part of the settlement stipulation in this litigation and are in substantial part as follows:

(a) Murchisons' right by agreements of March 15th, 1954, to "put" 200,000 Central shares to Alleghany without qualification was eliminated by agreement of July 15th, 1954.

(b) Instead, Alleghany bought from Murchison Brothers and Richardson 300,000 Central shares at $25 per share, with a guarantee against loss during the life of the joint venture as well as a guarantee that Alleghany would have a minimum return of 4½ per cent on its investment.

This guarantee against loss, it should be noted, has now become more valuable inasmuch as the market price of Central stock recently dropped below $25 per share and may again be below that figure when my report is considered by this Court.

(c) In addition, Alleghany obtained the right to vote the 300,000 Central shares of the Murchisons and Richardson, thereby strengthening Alleghany's working control over Central. Alleghany was also given the right to use this additional 300,000 shares as collateral for any borrowings it might care to make.

(d) By agreement of December 13th, 1954, the Murchisons granted Alleghany an option to buy 135,000 Central shares at an average price of $30 per share. Alleghany exercised the option and purchased said Central shares at a price of about $1,500,000 less than their then market price on the New York Stock Exchange.

(e) In May, 1955, Central reimbursed Alleghany for the $1,308,000 proxy fight expenses, for the expenditure of which the defendants were attacked by the complainants herein.

In addition to the foregoing provisions, the stipulation of settlement modifies the several joint venture agreements between Alleghany and Murchison Brothers not involving Central stock.

These joint venture agreements provided that Alleghany's losses in one venture will be offset against possible profits in the remaining ventures before the loss guarantee of the Murchison Brothers can come into effect. In short, the guarantee of Murchison Brothers to Alleghany was in the aggregate and not individual. The settlement agreement changed this to give Alleghany a larger measure of protection.

The new agreement offered by the settlement provides that if Alleghany sustains a loss on any one venture, Murchison Brothers must indemnify Alleghany for that loss even if Alleghany had made profits on the other

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ventures. The parties to the stipulation agreement estimate the value of this revised guarantee at some $300,000.

The settlement agreement further provides that the individual defendants, in addition to the strengthened guarantees hereinabove described, must pay to Alleghany Corporation the sum of $700,000 in cash.

It is expressly provided that the stipulation of settlement is to constitute "full and complete satisfaction and discharge of all claims alleged in the Complaint as against all defendants named in the Complaint other than Alleghany," without prejudice, however, to the following matters:

> (a) Any judicial or administrative decision concerning Alleghany's obligation, if any, to register under and conform to the Investment Company Act of 1940.
>
> (b) The claim in the Complaint for an injunction against the proposed exchange by Alleghany of its preferred stock for its new convertible preferred stock.

As previously stated, after the submission of the stipulation of settlement herein, and after the hearings before the undersigned were closed, new settlement negotiations took place at the suggestion of United States District Judge Walsh in the Breswick *v.* Briggs case, between the plaintiffs and the defendants therein.

In the course of these negotiations both sides made various settlement offers, none of which was accepted by the other. The course of these negotiations and the various offers made in connection therewith are set forth in detail in my Federal Court report, a copy of which will be submitted to this Court. Although the many offers made by the defendants, which they have renewed in the present proceeding, are not all the same and their terms are somewhat complicated, the principal points may be summarized as follows:

(1) Defendants are willing to undo the IDS transaction of 1954-1955 (Par. 38 of the consolidated Amended Complaint), by having Murchison Brothers return to Alleghany the 130,000 common voting shares of IDS in exchange for the return by Alleghany to Murchison Brothers of the 130,000 non-voting Class A shares of IDS.

(2) Defendants are willing to transfer to Alleghany 225,000 shares of the common stock of Central for $300,000 less than the market price of Central stock on the effective date of the proposed settlement.

Defendants suggest that Alleghany is to pay for these Central shares by the issuance of its own convertible preferred stock. Such stock is subject to various terms, which need not be detailed here in view of the disposition of this case which I shall recommend. As an alternative to proposal "(2)" just mentioned, defendants are willing to pay to Alleghany the sum of $300,000 in cash (in addition to the $700,000 cash previously agreed upon).

The offer now before the undersigned for recommendation of judicial approval or rejection is therefore the one embodied in the original stipulation of settlement as enlarged by the new proposals hereinabove set forth.

Duties of the Referee.

It is the province of the Referee and the Court in a proceeding of this character to weigh the probabilities and possibilities of victory or defeat as indicated by the factual and legal situations presented. The rules governing judicial approval of the settlement of a stockholders' action have been frequently enunciated and need not be restated. (Winkelman v. General Motors Corp., 48 F. Supp. 490, 493 (S. D. N. Y. 1942); Bysheim v. Miranda, 44 N. Y. S. 2d, 15; Diamond v. Davis, 62 N. Y. S. 2d, 181; and Shielcrawt v. Moffett, 59 N. Y. S. 2d, 619). Suffice to say that the pur-

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pose of the settlement is to avoid burdensome litigation, and it is not necessary to try out all the issues on their merits in order definitely to establish liability or its lack before approving a settlement as fair (Neuberger *v.* Barrett, 39 N. Y. S. 2d, 575).

In the light of the generally accepted authorities, we proceed to consider the fairness, reasonableness and adequacy of the settlement from the following viewpoints:

(1) Was the settlement negotiated at arm's length and in good faith?

(2) What are the probabilities of success or failure with respect to each cause of action?

(3) Is the amount of the proposed settlement reasonable in the light of that evaluation?

The Good Faith and Arm's Length Character of the Settlement Negotiations.

The objectants, and more particularly objectant Rosen, have maintained throughout the hearings before me that the settlement agreement was not negotiated in good faith; in fact, if not actually collusive, it was negotiated under such circumstances as to render it inequitable for this Court to approve the agreement.

Objectants make the following principal contentions:

(I) Proponents' conduct was inequitable in that they excluded the Breswick plaintiffs and indeed everyone else from the settlement negotiations.

(II) The exclusion of the Breswick plaintiffs is particularly aggravated by the fact that the formal settlement agreement was executed on July 25th, 1955, only four days after the three-Judge decision temporarily enjoining the proposed exchange of Alleghany's old preferred stock for new preferred stock, and determining that Alleghany was

within the jurisdiction of the Securities and Exchange Commission under the Investment Company Act rather than under the jurisdiction of the Interstate Commerce Commission, under the Interstate Commerce Act.

The objectants contend that this decision obtained by the Breswick plaintiffs substantially enhanced the value of the claims alleged in the present action and that general counsel for the plaintiffs herein did not give adequate weight to it.

(III) The Consolidated Amended Complaint in this Court "appropriates" certain Breswick claims. This comes about as the result of the motion made by counsel for defendant Young on May 25th, 1955, to consolidate the eight original State Court actions with an action in this Court instituted on May 17th, 1955, entitled "Annenberg *vs.* Chesapeake Industries, Inc." (Exhibit 218), which borrowed heavily from the Breswick derivative Complaints in the Federal Court, and an action instituted in this Court on May 5th, 1955, entitled "Koenig *vs.* Van Pelt" (Exhibit 218).

(IV) Objectants further charge that the proponents of the settlement withheld any information regarding the settlement until after July 25th, 1955, when the formal written agreement of settlement was executed.

Objectants say that all information as to the existence of the oral understanding which the proponents of the settlement had arrived at on April 18th, 1955 was improperly withheld from this Court and from the Federal Court in connection with certain motions which were made between April 18th and July 25th, 1955, when the settlement agreement was reduced to writing.

(V) Objectants further charge that general counsel for the plaintiffs herein entered into the agreement of settlement without sufficient factual information concerning the basis of the claims alleged herein and without adequate comprehension of the legal grounds on which those claims may be asserted.

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In the light of the objectants' contentions as above set forth, we proceed to discuss and evaluate the character of the settlement negotiations.

The Course of the Settlement Negotiations.

The evidence before me establishes that the settlement agreement was orally arrived at on April 18th, 1955, and that the written agreement of July 25th, 1955, formalized without material change the oral understanding of the parties.

Settlement negotiations commenced in July, 1954, at a conference attended by the defendant Young and Woodson Scott, Esq. of Lord, Day & Lord, his counsel, and Abraham Pomerantz, Esq. of Pomerantz, Levy & Haudek, general counsel for the plaintiffs. Each side led from its strength in discussing the relative merits of their positions, and no appreciable headway towards settlement was made (pages 2661, 3429, 3430).

Subsequent conversations between Scott and Pomerantz explored further grounds of settlement, but the parties were too far apart to come to any meeting of the minds (pages 4331, 4333-4334).

General counsel in the interim proceeded with customary pre-trial depositions, which were taken in the Federal Court action, presumably because of the broader examinations available under Federal practice.

Alleghany's secretary, David W. Wallace, was examined in December, 1954, while Young's deposition in the Federal Court consolidated action was taken on March 29th and March 30th, 1955.

During the course of these depositions, and more particularly during the course of Young's deposition, the parties had an opportunity to evaluate first hand the relative merits and weaknesses of their respective positions.

After the Young deposition, and sometime in early April, 1955, settlement negotiations resumed on a firmer

basis with Mr. Daly, of Lord, Day & Lord, advising Mr. Young of the possibility of an agreement. Some thirteen or fourteen discussions were had in all relative to a settlement (pages 2661, 4330-4334, 4058-4059, 4064 and 4185).

Before the final talks were held, Young notified the Murchisons of the progress that was being made towards settlement. The Murchisons desired to settle the litigation if possible, allegedly because it was burdensome, expensive and time consuming (492-493; 682-690). They designated their business associate, Donald H. Carter, to participate in the negotiations on their behalf.

The final settlement conference took place on April 18th, 1955 and lasted throughout the morning of that day. The settlement figures at the outset were far apart. Much "horse-trading" ensued with Mr. Pomerantz and Mr. Haudek representing the plaintiffs, Mr. Daly representing Mr. Young and Mr. Carter representing the Murchisons. While Mr. Wallace was present as a representative of Alleghany Corporation, he took no active part in the negotiation of the settlement.

After both sides had met together and then separately considered the various proposals and counterproposals, they finally reached agreement that the claims were to be settled for a cash payment of $700,000 and the execution by the Murchisons of the revised guarantees heretofore described.

The settlement, as worked out on April 18th, 1955, was expressly understood to cover "the whole ball of wax", that is, all derivative claims then pending (pages 645-6, 4417-8).

The settlement was subject to Court approval and it was understood that all of the numerous individual defendants who had not been consulted would have to be advised of the settlement and their approval obtained (pages 4092-93). However, it was made clear by Mr. Daly that Young and the Murchisons would pay the $700,000 even if nobody else did (page 4181).

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At no time up to and including April 18th, 1955 was the procedural method of carrying the settlement into effect discussed. Whether the settlement would be submitted to the State Court or to the Federal Court, or whether any motions would subsequently be made to amend Complaints in cases then pending, so as to present a complete statement of all derivative claims in one consolidated Amended Complaint, was a matter left entirely for later discussion between counsel (pages 4336-8, 4146).

Ultimately the settlement agreement was reduced to writing on July 25th, 1955. There was testimony on this reference from the proponents of the settlement that such delay was due to Mr. Daly's professional commitments; to the illness and death of Mr. Pomerantz's father, and to the difficulties which inevitably arise when an oral agreement involving numerous parties has to be reduced to writing.

After the Koenig *vs.* Van Pelt and Annenberg *vs.* Chesapeake Industries cases were brought in this Court, in May, 1955, they were consolidated with Zenn *vs.* Anzalone, by order dated May 27th, 1955. A motion was likewise made in the Federal Court for the consolidation of the Breswick derivative action, the Annenberg action and the three other suits then pending in the Federal Court, with the already consolidated Zenn *vs.* Anzalone Federal Court action. These motions were opposed by counsel for Breswick and were thereafter adjourned until August, 1955, and were ultimately denied by Judge Walsh in September, 1955 (Exhibit 411-A).

There can be no question that the consolidated Amended Complaint in this State Court action, in July, 1955, was the most comprehensive pleading then pending in either the Federal or State Court. Under the circumstances, I find it altogether reasonable that application for approval of the settlement was made to this Court rather than to the Federal Court.

Drafts of the stipulation of settlement were prepared in the early part of July, 1955, and were exchanged among

the parties (pages 4094-5, 4112-7). After several revisions, the final text of the settlement agreement was executed on July 25th, 1955, three days after the proposed settlement had been approved by Alleghany's executive committee.

Alleghany's motion for approval of the proposed settlement was made on July 28th, 1955.

The facts above set forth clearly establish that the settlement agreement, arrived at on April 18th, was reached at arm's length and in good faith. Events subsequent to April 18th, 1955 are discussed in connection with the other points raised by objectants as evidencing a claimed lack of good faith in the settlement negotiations.

The Exclusion of the Breswick Plaintiffs From the Settlement Negotiations.

The exclusion of the Breswick plaintiffs from the negotiations was advanced by objectant Rosen to this Court as a ground in support of his motion to vacate the order of reference. Objectant Rosen appealed from a denial of his motion, and the Appellate Division, First Department, in a *per curiam* opinion, unanimously affirmed the order denying the motion to vacate the reference, stating:

> "We construe the order of reference, in entitling appellant to raise any question as to the fairness, reasonableness or adequacy of the settlement, to include the issue and the effect, if any, of the exclusion of persons from the negotiations for settlement. We assume that unless there is an adverse effect on the settlement by reason of such exclusion, exclusion will not have been shown to be improper." (Zenn *v.* Anzalone, 1 App. Div. 2d 662, 146 N. Y. S. 2d 286; Exhibit 411).

We are therefore met with the question as to whether there was any adverse effect on the settlement by reason of such exclusion. I find that there was none.

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The law is quite clear that in a stockholders' derivative action the defendants may negotiate with one stockholder rather than another, or indeed with the management of the corporation, and if the settlement is negotiated in good faith and at arm's length and its terms are fair and in the best interests of the corporation, the settlement will be approved despite the fact that some stockholders were excluded from the negotiations. See Naitove *vs.* Morrow, N. Y. Law Journal, November 2, 1940, page 1386, column 4 (Supreme Court, N. Y. County), affirmed 260 App. Div. 1017, 24 N. Y. Supp. 2d 1003; Byshein *v.* Miranda, 44 N. Y. Supp. 2d 15 (Supreme Court, New York County 1943); Denicke *v.* Anglo African National Bank, 45 F. Supp. 524 (D. C., N. D. Cal. 1942) aff'd 141 F. 2d 285 (9th Cir., 1944); Finkelstein *vs.* Boylan, 40 F. Supp. 794 (Southern District of New York 1941).

There is nothing to show that the Breswick plaintiffs could have enhanced the value of any settlement to Alleghany by their presence at the negotiations. As of April 18th, 1955, the Breswick plaintiffs had not commenced their three Judge Court action, let alone achieved any success therein. So far as their derivative action is concerned, it had been commenced in February, 1955, but had not progressed beyond the filing of an Amended Complaint and the making of a motion before Judge Walsh, which was denied (130 F. Supp. 953; Exhibit 178). There was nothing to indicate that as of April 18th, 1955, the Breswick plaintiffs were in a stronger bargaining position than general counsel for the plaintiffs herein or the numerous attorneys associated with them.

While it is true that the Breswick derivative Complaint charged Alleghany's transactions with the New York Central and in IDS stock, in so far as they occurred subsequent to January, 1954, as being violative of the Investment Company Act, general counsel for the plaintiffs have stated, and there is documentary evidence to prove, that throughout the course of the settlement negotiations they

were aware of and had given serious consideration to the Investment Company Act theory.

It had been urged in Schepis *vs.* Briggs (Exhibit 309), which was commenced in this Court on April 9th, 1954, or approximately one year prior to the settlement. The Schepis case was one of the actions consolidated in the Zenn State Court action (Exhibit 218).

Schepis sought only a rescission of the Central transaction and not a recovery of profits made by the defendants thereon, as did the later brought Breswick action. The Breswick Complaint asserted the same substantive charge as Schepis but asked for a different remedy, a shift occasioned by the fact that after the Schepis action was brought the market price of Central stock took a sharp rise. This event, of course, could not have been foreseen by Schepis, whose best remedy at the time of the filing of his Complaint appeared to be rescission on the basis of the Investment Company Act. It might be noted that the market value of Central has recently suffered a heavy drop so that from the plaintiffs point of view rescission might again seem to be the more attractive remedy.

Mr. Pomerantz testified that he discussed the Investment Company Act with Mortimer Schapiro, attorney for Schepis, at some length in the summer of 1954, and that he, Mr. Pomerantz, was of the opinion that it was a cause of action in which the dangers to Alleghany might well outweigh the advantages (pages 4301-18, 4409-12; Exhibits 464-465).

The objectants' charge that Mr. Pomerantz gave no consideration to the Investment Company Act theory is negated not only by Mr. Pomerantz' testimony but also by contemporaneous documents. Mr. Pomerantz held to the view that the Investment Company Act cause of action, if successful, might well lead to a judicial determination that the transactions of Alleghany from January 19, 1954 onward, under attack in the Consolidated Complaint, were void, and that such a determination in turn might well give

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rise to a right on the part of Murchison Brothers and Richardson to tender back the moneys that had been advanced as loans from Alleghany, and to recover the Central Stock sold to Alleghany under the July 15th, 1954 agreements and the December 13th, 1954 agreements, on which Alleghany then had a paper profit of several million dollars.

The objective problems inherent in the Investment Company Act theory will be discussed in a later phase of this report. Suffice it to say for the moment that Mr. Pomerantz had given mature consideration to the Investment Company Act theory when the settlement was negotiated, and in the exercise of his professional judgment did not believe that the application of the theory would substantially increase th likelihood of recovery for Alleghany.

I am not unaware that Judge Walsh on the papers before him has found that the exclusion of the Breswick plaintiffs from the settlement negotiations constituted inequitable conduct on the part of the proponents of the settlement. Out of respect for that ruling of the learned Judge, I have given the objectants, who made the same charge here, the broadest latitude to explore the circumstances surrounding the settlement negotiations. In that respect they have conducted a most searching cross-examination of Mr. Pomerantz, Mr. Daly, Mr. Young, Mr. Carter, Mr. Murchison, Mr. Wallace and Mr. Klinger (plaintiffs' accountant) and have had produced for examination and received in evidence voluminous records of Alleghany Corporation.

My review of the testimony and the documentary evidence has given me a complete and detailed picture of every phase of the negotiations and the circumstances surrounding the exclusion of the Breswick plaintiffs therefrom. Upon the entire record, I am convinced that the settlement was not collusive and that the failure of the proponents to call the Breswick plaintiffs into the negotiations was not

motivated by any ulterior or invidious purpose and was not inequitable. I can see no evidence that it adversely affected the settlement strenuously negotiated by plaintiffs' general counsel.

The Appropriation of Breswick Claims.

It is clear from the testimony that the defendants, in agreeing to the verbal settlement of April 18th, 1955, intended it to include all derivative actions then pending or, as Mr. Murchison phrased it in his testimony, "the whole ball of wax." It is further clear that general counsel for plaintiffs understood that this was a necessary condition of the settlement.

The right of a stockholder to include in his settlement claims not yet alleged in his complaint has been affirmed in Winkelman *vs.* General Motors, 48 F. Supp. 490, 495-6 (S. D. N. Y. 1942). So also has it been determined that a plaintiff may amend his Complaint to bring in causes of action not included therein as of the date of the proposed settlement and thereby have them included in the judgment. (Pergament *vs.* Frazer, 93 F. Supp. 13 (D. C. E. D. Mich. 1950), affirmed *sub nom* Masterson *vs.* Pergament, 203 F. 2d 315 (CA 6, 1953) Cert. denied 346 U. S. 832).

The causes of action in a stockholders' derivative action clearly belong to the corporation and not to any individual stockholder. The institution of a derivative action by one stockholder does not prevent others from suing on the same cause of action. (Dresdner *vs.* Goldman Sachs Trading Corp., 240 App. Div. 242, 269 N. Y. S. 360 (2d Department 1934); Brinckerhoff *vs.* Bostwick, 99 N. Y. 185, 194 (1885).)

The question of who borrowed from whom is therefore academic. Analysis of the consolidated Amended Complaint in Zenn *vs.* Anzalone, in this Court, discloses an inclusion of Breswick causes of action, while the Breswick Complaint in the Federal Court includes certain causes of action first alleged in the Zenn Complaint.

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No real purpose can be served by further discussion of alleged appropriation of claims except to state that the record satisfies me that general counsel for plaintiffs, while not amending their Complaint in this Court to include transactions occurring after March 15th, 1954 until the order of consolidation of Judge Gavagan on May 27, 1955, did keep informed of developments subsequent to March 15th, 1954. It was these developments that comprised the basis of the Breswick Complaint and other Complaints subsequently filed.

Thus, the July 15th, 1954 joint venture agreements between Alleghany, the Murchisons and Richardson were marked in evidence at a deposition conducted by general counsel for plaintiffs on December 21st, 1954 (Exhibit 3, pages 18-19). Likewise, general counsel for plaintiffs wrote to counsel for defendants on January 21st, 1955, advising them of general counsel's interest in investigating the IDS transaction of 1954-5, and the 135,000 share option on Central stock, of December 1954 (Exhibit 462).

Certainly, there is logic and merit in general counsel's contention that it was unnecessary to supplement the Complaint every time a new transaction came under investigation, but that the more appropriate procedure was to postpone amendment and supplementation until after the completion of all depositions and discovery proceedings.

General Counsel's Claimed Ignorance of the Facts.

One of the objectants charged that general counsel for the plaintiffs was inadequately informed concerning the merits of the causes of action whose settlement they are proposing. The contention would seem to have been sufficiently answered by the huge volume of documents offered by general counsel at the hearing in connection with the merits of the case and also by the pre-trial depositions taken by general counsel, which tend to indicate the thorough study made by them.

However, objectant suggested that possibly these documents were accumulated by general counsel only after the oral settlement of April 18th, 1955. In that connection, I permitted said objectant to conduct a most searching examination both of Mr. Pomerantz and of the accountant for general counsel, Mr. Eric J. Klinger. The examination satisfied me that general counsel as well as Mr. Klinger had made a most thorough inquiry into the facts before the case was settled on April 18th, 1955, and that general counsel had given painstaking consideration to the law applicable to these facts.

While the proceedings before me related to the adequacy of the proposed settlement rather than a trial on the merits of the issues involved, I nevertheless permitted counsel for the several objectants to offer any and all evidence which might have any conceivable bearing either on the merits of the case or the claimed impropriety of the settlement. I did this largely because of suggestions or charges made in prior judicial proceedings, which I felt warranted nothing short of the most searching judicial scrutiny.

As a result, the record in these settlement hearings more nearly resembles a strenuous trial on the merits than a hearing on the fairness of the settlement. I believe, however, that the end result has been to afford every objectant an opportunity to go into all aspects of the case which might have any possible relevance to the issues. Diligent and capable counsel for both the proponents and the objectants have aided and abetted me immeasurably in submitting to this Court a record which is complete and detailed in every respect.

Failure to Reveal Settlement Prior to July 25, 1955.

It is undisputed that no mention was made of the settlement until after it had been formalized by written agreement under date of July 25th, 1955. Proponents say that to make public a verbal agreement before it had been

reduced to writing, and at a time when either party might withdraw, would have been contrary to elementary business usage and would have invited public discussion and perhaps criticism of the settlement before its terms were defined. They further assert that revelation of the settlement before being reduced to writing would probably have initiated a flood of additional derivative actions on the part of stockholders and their counsel, anxious to share in the financial benefits that might accrue.

Between April 18th, 1955, when the oral settlement was reached, and July 25th, 1955, when it was reduced to a firm written stipulation, the defendants in the State and Federal Court actions made several procedural motions to consolidate the various actions pending in the respective Courts and to stay additional depositions noticed in the Federal Court.

The objectants charge that the failure of these applications to state that an oral settlement had been reached and was in the process of being reduced to writing was evidence of fraud or collusion which vitiates the settlement.

The action of the proponents in failing to reveal the settlement does not seem to support the charge of the alleged conspiracy. After all, if defendants were desirous, as they unquestionably were, of staying all other proceedings and depositions and procuring consolidations, it would have been much easier for them to secure that end by stating openly that the case had been settled; that the settlement agreement was in the process of being reduced to writing and that in accordance with the usual practice they requested a stay of all proceedings and a consolidation of all actions until the settlement was put before the Court for consideration.

I have no doubt that had defense counsel stated to the Federal and State Courts that a settlement had been reached and would shortly be placed before the Court for judicial determination of its fairness, the relief which they were seeking would have been granted more readily than by

withholding the facts. Defendants' counsel thus did not withhold from this nor the Federal Court any fact which might have induced these Courts to withhold the relief they were seeking.

I find altogether credible and plausible the statement of Thomas F. Daly, Esq., that his real reason for not publicizing oral agreement was to forestall a further flood of derivative litigations and to avoid the risks incident to publicizing important corporate events before they had been finalized.

I do not see how any material or procedural rights of the objectants were frustrated by the failure to reveal the oral settlement to this Court. The settlement was officially announced in the form of an application to the Court seeking its judicial approval, on July 28, 1955. The short delay in announcing the settlement could not nave prejudiced the rights of the objectants or of Alleghany. Even if the deposition sought by Breswick had been permitted to go ahead at the time it was noticed, there is no reason to assume that it would have revealed any facts other than those that were elicited through the painstaking examination of numerous witnesses in the course of these settlement proceedings.

It should be borne in mind that in the proceeding before me, Mr. Graubard has appeared as counsel for Rosston, Hort & Brussel, who are attorneys for Breswick in the Federal Court as well as attorneys for objectant Rosen here. Hence, the same counsel who are complaining that their deposition has been delayed in the Federal Court have had and have availed themselves of abundant opportunity to place before me any and all facts which bear on the question of the propriety and adequacy of the settlement.

Apart from the foregoing, I do not think that the procedural steps taken by defendants' counsel between April 18th and July 25th, 1955 have any direct bearing on the issue before me, which relates solely to the fairness and propriety of the proposed settlement. If the settlement is

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fair, adequate and beneficial to Alleghany, it should be approved; if not, it should be rejected. Since I have concluded that the settlement was negotiated in good faith, without any inequity, the approval or disapproval of the settlement must depend on the merits of the causes of action herein and the sufficiency of the consideration Alleghany is to receive for relinquishing them. To these complex matters we now turn our attention.

THE FIRST CAUSE OF ACTION.

The IDS Transaction of 1949-50.

Investors Diversified Services, Inc. (IDS) is a registered investment company organized in Minnesota (Exhibit 25). The authorized capital stock of IDS consists of 2,000,000 shares, with a par value of $1.00 per share. 1,300,000 shares are designated as "Class A common stock," while the remaining 700,000 shares are designated as "Common Stock." The rights and privileges of the two classes of stock are similar except that the Class A is non-voting. On December 31st, 1949, there were 175,836.37 shares of IDS Class A issued and outstanding, and 114,908.16 shares of Common voting stock. IDS had three wholly owned subsidiaries: Investors Syndicate of America, Investors Syndicate of Canada, Limited, and Investors Syndicate Title and Guaranty Company. These companies are in the business of issuing face amount certificates which are sold to the public on either an installment or a fully prepaid plan (Exhibit 4, page 64; Exhibit 38, page 1).

The receipts from the sale of installment certificates are invested and used in meeting interest and maturities on certificates (page 2595; Exhibit 363-A; Exhibit 393).

IDS also has four affiliated companies, which are mutual fund or open-end investment companies. These are: Investors Mutual, Inc., Investors Stock Fund, Inc., Investors

Selective Fund, Inc., and Investors Mutual of Canada, Limited (Exhibit 4, pages 64-65; Exhibit 38, page 1; Exhibit 363-A, 393). These investment trusts issue shares to the public representing a proportionate interest in the assets owned by the company. The selling price is determined by the market value of the securities in the company's portfolio at the time of the sale, less a loading charge (Exhibit 4, pages 67-68).

IDS has another substantial source of income by way of management fees from subsidiaries and affiliated companies (Exhibit 4, page 118; Exhibit 363-A, Exhibit 393).

Alleghany became interested in IDS in late 1948, when a New York broker approached Young and urged that he and Kirby or Alleghany buy a substantial block of 85,666 shares of IDS common voting stock owned by B. C. Gamble and Hal Roach (pages 2307, 2483-84).

Alleghany, in 1948, instructed one Purcell, at that time Vice-Chairman of the Board, Vice-President and a Director of the corporation, to investigate IDS for the purpose of determining whether a substantial investment should be made in it (page 3927).

Apart from his own personal investigation, Purcell had special reports prepared, one by Alleghany's organization, known as the "Shipman Report," dated April 7, 1949, and the other known as the "Stiver Report," dated January 10, 1949, and made by a Cleveland investment banker (pages 2486, 2498-99, 2704, 3928; Exhibits 363-A, 393).

The Stiver Report set forth both favorable and unfavorable factors in connection with the acquisition of IDS stock. The Shipman Report in general was more favorable than the Stiver Report in terms of possible acquisition by Alleghany.

Alleghany's directors, in the Spring of 1949, after careful consideration of the two Reports, acquired 90 per cent of the voting stock of IDS and 48,225.61 shares of the Class A stock for Alleghany. The average cost of the voting stock, most of which was acquired from Gamble and

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Roach by contract of April 25th, 1949, was $18.25 per share (Exhibit 319). The average cost of the Class A stock, purchased in the open market during the months of April and May, 1949, was $8.1453 per share.

Alleghany's Board of Directors, on December 6, 1949, resolved to offer certain of the securities in its portfolio to the stockholders in exchange for Alleghany preferred stock (Exhibit 367-F). Accordingly, pursuant to an executive committee resolution of December 15th, 1949, Alleghany invited tenders of its preferred stock by its stockholders in exchange for certain portfolio securities of Alleghany, and set January 20th, 1950 as the last date on which tenders could be made and accepted (Exhibit 364-F; Exhibit 192).

Among the portfolio securities available for exchange for Alleghany preferred stock were 48,225.61 Class A shares of IDS. At the directors' meeting of Alleghany, on December 6th, 1949, Young, as Chairman of the Board, pointed out that an offer of these shares to stockholders would require registration with the S. E. C., and in view of the small size of the holding and the costs and delays incident to registration, the exchange offer on that basis would not be worth while.

The Board accordingly resolved to offer these shares to the officers of Alleghany in exchange for Alleghany's preferred stock held by them. The exchange ratio was to be determined by the market value of the Alleghany preferred stock on the one hand and by the market value or cost to Alleghany of the IDS stock, whichever would be higher.

Market value was to be determined as of the "final exchange date," on which tenders by Alleghany's stockholders would be accepted, pursuant to Alleghany's public exchange offer. The exchange was expressly made subject to the approval of Alleghany's stockholders at their next annual meeting on May 3rd, 1950 (Exhibit 27).

Young and Kirby accepted the exchange offer and received 48,125 Class A shares of IDS, valued at $8.1453 per share (cost to Alleghany), plus a nominal cash payment upon their tender to Alleghany on the date of January 20th, 1950 of an aggregate of 4840 shares of Alleghany's Series A preferred stock, value at $81 per share (the then market value) (Exhibits 204, 28).

The market price of IDS Class A stock in the over-the-counter market, throughout the month of January, and more particularly on January 20th, 1950, was substantially below $8.1453 per share (Exhibits 124-475).

Alleghany, on March 15th, 1950, sent to its stockholders its annual report for the year 1949. Information concerning Alleghany's investment in IDS and future prospects in connection therewith were set forth at pages 6, 7 and 14 of the Report (Exhibit 17).

Alleghany, under date of April 6th, 1950, sent to its stockholders a notice of the annual meeting to be held on May 3rd, 1950, with a proxy statement setting forth portions of the directors' resolution of December 6, 1949, together with other information, and inviting the stockholders to approve the proposed exchange between Alleghany, Young and Kirby of IDS Class A stock for Alleghany's Series A preferred stock (Exhibits 30-31).

The proxy statement had been cleared with the S. E. C. (Exhibits 334, 337-338). The proxy statement of April 6th, 1950, also referred to an agreement of January 20th, 1950 between Alleghany and Purcell (Exhibit 454), which provided that Purcell, who was managing Alleghany's investment in IDS, would use his best efforts to acquire IDS shares for his personal portfolio at the lowest available prices. The price was not to exceed an average of $10 per share, or an aggregate total of $125,000, and Mr. Purcell was granted an option to resell these IDS shares to Alleghany, at his cost, within five years.

Although Purcell was not participating directly in the exchange between Young and Kirby and Alleghany, it was

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contemplated that he would indirectly participate, since he had made a tentative agreement to purchase some 12,000 shares of IDS Class A from Young and Kirby in the event that the exchange offer was approved by the stockholders.

Alleghany discussed this matter with the S. E. C., which felt that stockholders should be notified of Purcell's interest. Accordingly, Alleghany, on April 26th, 1950, mailed to its stockholders additional proxy material, spelling out in detail Purcell's agreement with Young and Kirby for the purchase of IDS stock from them (Exhibit 32, pages 4019-20).

Alleghany stockholders at their meeting on May 3rd, 1950, approved the exchange of the 48,125 Class A shares of IDS for the 4840 shares of Series A preferred stock of Alleghany, and the exchange was consummated during May (Exhibits 34, 35, 259-263).

The market price of IDS Class A stock, by the time of the stockholders' meeting, had risen to $11 bid, $12 asked (Exhibit 421).

The Complaint alleges that the proxy statements of April 6th and April 26th, 1950 were false and misleading in that they failed to reveal a spectacular increase in the earnings of IDS during the first three months of 1950, and a further radical increase which was foreseen and known by the defendants Young and Kirby. It is alleged that the proxy statements were tainted with fraud and violated Sec. 14 (a) of the Securities Exchange Act of 1934.

The Complaint asserts that by reason thereof, the stockholders' approval of the exchange was invalid, and rescission of the exchange is demanded with an accounting of profits made by Kirby and Young.

The objectants also claim that the transaction was unfair to Alleghany and unduly profitable to Young, Kirby and Purcell.

Defendants Young and Kirby, as well as Purcell and Anzalone, who likewise profited by the exchange transaction, Anzalone directly to the extent of 100 shares of IDS Class A and Purcell indirectly by his subsequent purchase

from Young and Kirby, urge that there was a fair revelation to the stockholders and that the exchange of IDS Class A stock by Alleghany with its officers was fair and reasonable and in the best interest of the corporation and the stockholders. With respect to the latter proposition, they contend that at the time of the exchange offer, as well as at the time of its consummation, IDS for Alleghany was at best a speculative and hazardous investment, and that the defendants had no inside information from which they could have foreseen its subsequent spectacular rise in value.

Summarizing the speculative and hazardous nature of the investment from the evidence adduced on the reference, defendants contend:

(1) IDS in 1949 had $400,000,000 in certificate maturities imminently due, and inadequate income and reserves to meet them (Young, 2903-4).

(2) IDS had a long history of difficulties with the S. E. C. over its selling techniques (Young, 2597-8; Exhibit 212).

(3) The S. E. C. was insistent on changes in IDS accounts with respect to the rate of accrual of certificate reserves and a change of its reserve accumulations to an accrual basis rather than on an annual basis (Purcell, 3950-3953; Exhibit 453).

(4) There was a possibility that the holders of $15,000,000 to $25,000,000 worth of certificates would elect to rescind their purchases (Young, 3413-3414).

(5) The National Association of Securities Administrators was investigating IDS and had the power to put the company out of business (Young, 3416-17).

(6) IDS was selling mortgages to its subsidiary at a premium and improperly taking the premium into its income account while the subsidiary capitalized it over the life of the mortgage; thus the IDS books did not properly reflect

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its true earnings (Young, 3215-16; Purcell, 3965-68 and 3977-80; Exhibit 453).

(7) There was a controversy between IDS and the Minnesota Banking Commission on the interpretation of the language in certificates relating to types and amounts of assets required to be maintained by IDS. Adoption of the Commission's view might well have left IDS open to receivership (Purcell, 3984; Young, 3216-19).

(8) The S. E. C. was contending that IDS should carry its preferred stock portfolio at current market prices rather than cost. This would have eliminated the company's capital and surplus (Young, 3219-20; Purcell, 3986-87).

(9) The real estate operations of IDS were unsound and profits therefrom illusory (Young, 3422).

(10) The IDS stock was not a stable security for collateral under Alleghany's bank loans (Young, 3210).

In view of all the above hazards, the defendants contend that it was in Alleghany's best interest to reduce its heavy investment in IDS stock, and that it was likewise in the best interest of Alleghany to retire part of its preferred stock by the exchange because of heavy dividend arrearage that Alleghany desired to eliminate.

It is further contended by defendants that Alleghany's investment in IDS was so substantial and of so speculative and risky a nature that it required special attention. The exchange offer was justified in part as having afforded Alleghany's officers a special incentive to give IDS the expert attention that it required.

Defendants further claim that the offer, made simultaneously with the offer to all stockholders to exchange other portfolio securities with Alleghany, was on terms less favorable to the officers than the terms offered to the general stockholders because the IDS shares were to be sold at market or cost, whichever was greater, while the securities generally were to be sold at market. In this connection they

assert that the market price of IDS was substantially below the cost price on the exchange offer.

Defendants assert that all stockholders were given full relevant information about the exchange and that Alleghany actually presented the IDS picture more favorably than it existed. They assert that Young and Kirby had no reason for concealing any material facts on the exchange offer from stockholders, in view of their contention that they could readily have bought an equal amount of IDS stock at a lesser price in the open market.

Before discussing the merits of these charges and defenses, I must consider the objections which have been made, particularly by the objectant Rosen, to the jurisdiction of this Court to pass upon the settlement of this cause of action.

The objection is based on the contention that the first cause of action rests in part at least upon the Securities Exchange Act of 1934, and that Sec. 27 of that Act vests in the Federal Court exclusive jurisdiction of all claims based thereon.

This jurisdictional question was raised by objectant Rosen at Special Term of this Court in the form of a motion to vacate the order of reference herein. This motion was denied by Mr. Justice McGivern, and his decision was affirmed by the Appellate Division, First Department (1 App. Div. 2nd 662, 146 N. Y. S. 2d 286, Exhibit 411).

While it is doubtful if anything remains of the jurisdictional question after these decisions, even that doubt has been resolved by the recent decision of the United States Court of Appeals for the Second Circuit, in Howard vs. Furst, 238 F. 2d 790 (1956). Upon substantially similar facts to those at bar, the Court of Appeals with reference to a cause of action based, as here, upon a false proxy statement, held that "every essential element of appellant's case depends upon common law and the statutes of the State of New York," and that "appellant's claim is for violation of State created rights, in no real or substantial

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sense dependent upon the provisions of the Securities Exchange Act of 1934 relative to proxy statements;" so that "the allegations with reference to the proxy statement constitute a mere excrescence or superfluity tacked on to what are otherwise sufficient allegations of a claim for relief under New York law."

Accordingly, the Court of Appeals affirmed the judgment of the District Court, which dismissed the Complaint for lack of jurisdiction over the subject matter.

Since Howard *vs.* Furst, *supra,* in all essential respects is similar to the case at bar, it follows that the provision of the Securities Exchange Act, conferring exclusive jurisdiction upon the Federal Courts, is inapplicable here, and that this Court does have jurisdiction to pass upon the fairness of the settlement of this litigation, including the first cause of action in the Complaint.

I turn therefore to a consideration of the grounds for attacking this transaction on the merits. The principal attack is directed to defendants' alleged failure to make adequate revelation to the shareholders of Alleghany, in the proxy statement soliciting their approval, as to the alleged sharp upward turn in the profits of IDS and the further improvement of future earnings which it is claimed was foreseen by Young, Kirby and Purcell.

It is alleged that had the shareholders been previously informed of the favorable developments in IDS at the time their approval was solicited, they might have rejected the transaction instead of approving it.

We are thus brought to the question of whether material information was withheld from Alleghany stockholders.

The contemporaneous records show that Alleghany stockholders were informed that IDS had just enjoyed great improvement in its earnings and that the future of IDS was bright. This optimistic picture was presented in the annual report of Alleghany for the year 1949, which was mailed to the shareholders on March 24th, 1950, shortly prior to the April 6th, 1950 proxy statement, which

expressly referred the stockholders to the annual report. The annual report (Exhibit 17) informed Alleghany's stockholders (p. 6):

"The 1949 net income of IDS (including the proportionate share of earnings of its subsidiaries) amounted to approximately $1,631,000 compared with $374,355 for 1948."

"Alleghany Corporation regards its interest in IDS as a long-term investment. Because of cash requirements of maturing IDS certificates, we do not expect any return on our investment in IDS for a number of years. The outlook for eventual profits is considered to be unusually promising."

Alleghany's shareholders were thus informed of the very sharp recent rise in the earnings of IDS—about 4½ times from 1948 to 1949. They were also informed that "the outlook for eventual profit is considered to be unusually promising." This language does not support the contention that Young and Kirby were attempting to withhold from the shareholders of Alleghany the sharp upturn in the fortunes of IDS and the unusually promising future of that company.

However, it is argued that it was improper for defendants not to inform the shareholders of Alleghany of the earnings of IDS for the months of January, February and March, 1950. There is no dispute that they were not informed of the earnings and losses of those months. Whether the omission is improper can be best appraised by setting forth the quarterly earnings for 1949 and the first quarter of 1950, as well as the monthly earnings from November, 1949 to March, 1950.

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QUARTERLY EARNINGS OF IDS, COMBINED WITH SUBSIDIARIES

(Exhibits 97, 292, 293).

Quarterly Period	Amount	Earnings Per Share
First 1949	$(1,298) loss	$(.01) loss
Second 1949	482,249	1.66
Third 1949	410,112	1.41
Fourth 1949	474,422	1.63
First 1950	639,040	2.20

The monthly earnings of IDS combined with subsidiaries (Exhibits 397 B-H, 301):

Month	Amount	Earnings Per Share
November, 1949	$ 370,866	$ 1.27
December, 1949	(184,798) loss	(.64) loss
January, 1950	(215,857) loss	(.74) loss
February, 1950	424,337	1.46
March, 1950	430,560	1.48

At the outset of this discussion, it is necessary to determine whether Young and Kirby knew the earnings of IDS for January, February and March, 1950, at the time the proxy notice of April 6th and the supplementary letter of April 26th was sent to the shareholders of Alleghany. There is no doubt that the earnings for the months of January and February, 1950, were known to Young, since the testimony indicates that Purcell was the Alleghany officer in charge of supervising IDS and of keeping Young informed, and that Young, with the help of Purcell, kept in close touch with all developments. The earnings of March, 1950, however, were not determined by the accounting staff of IDS until April 21st, 1950 (See Exhibit 397-F). They were therefore unavailable at the time of the proxy statement of April 6th, 1950. The record does not show whether these earnings

became known to Young in time to be included in the supplemental letter to stockholders dated April 26th, 1950. However, this uncertainty is not critical to my conclusion.

Taking the January and February earnings together, which were well known to Young, there was certainly nothing to indicate a drastic rise in the earnings of IDS. Thus, January, 1950, showed a loss of $215,000 whereas February showed a gain of $424,000. The average, only slightly more than $100,000 per month, was at an annual rate less than the stated earnings for the year 1949, to wit, $1,631,000.

Even if we assume that the March earnings were known to Young and Kirby when they sent the supplementary letter to the shareholders on April 26th, 1950, it does not appear that revelation of the earnings of that additional month to the stockholders would materially alter the picture. The average monthly earnings for the first quarter of 1950 were about $213,000, which was less than the earnings of November, 1949 ($370,000); the first quarterly earnings of 1950 were therefore not necessarily indicative of a further drastic rise in the earnings of IDS.

It is true that the earnings for the first quarter of 1950 exceeded the last quarterly earnings of 1949 by about 35 per cent, but that rise was much less than the upsurge of earnings from 1948 to 1949, of which the shareholders had been advised; and it was well within the prediction of an "unusually promising outlook for future earnings," communicated to the stockholders by Young in the annual report for 1949. In the light of that report, the stockholders could not assume that the monthly earnings for January, February and March, 1950, were anything but a continuation of the very favorable picture which had been projected for them in the annual report of Alleghany.

Accordingly, I find that the defendants' failure to advise Alleghany stockholders of the monthly earnings for January, February and March, 1950, was not calculated to and did not mislead them and was not due to any fraud or deception practiced by the defendants.

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The plaintiffs also contend that during the months and years after March, 1950, the earnings of IDS experienced a truly spectacular rise, and that such rise was accompanied by a similar advance of the market price of the IDS stock, and that these future developments were foreseeable by Young and Kirby but were not communicated to the stockholders of Alleghany.

There is no doubt that the post March, 1950, increase in the earnings and market price of IDS was truly spectacular. In so far as the year 1950 is concerned, the record reveals the following earnings of IDS:

Quarterly earnings of IDS combined with subsidiaries for the last three-quarters of 1950 (Exhibit 97):

Quarterly period	Amount	Earnings per Share
Second 1950	$2,192,519	$7.54
Third 1950	1,512,670	5.20
Fourth 1950	2,110,182	7.26

Paralleling these increased earnings, the market price of IDS stock rose to almost $30 per share by the end of the year 1950. Even if we assume that Young and Kirby in April, 1950, had reason to take a very optimistic view of the future earnings of IDS, this does not lead to a finding that Young and Kirby withheld material information from the stockholders of Alleghany. They did tell the stockholders in the annual report for 1949 that the outlook for future earnings was "unusually promising." Any attempt at more concrete prediction might well have been foolhardy. It is a common experience that the hope for future earnings improvements, however sound they may appear at the moment, is often disappointed by the event.

The testimony in this case establishes that the future of IDS in the early part of 1950 was not without serious pitfalls, and even though most of the grave dangers which were then apprehended by Alleghany's management did not ultimately come to pass, it cannot be said that these dangers

were merely illusory. We must further consider that any specific predictions which Young and Kirby might have made concerning the future earnings of IDS would be read not only by the stockholders of Alleghany but by the public at large, and that in reliance on such predictions many persons might have been induced to invest large amounts of money in the stocks of Alleghany and IDS. If the rosy predictions of Young and Kirby should subsequently not materialize, they and Alleghany might have been exposed to a huge claim for damages by disappointed investors. (See Sec. 18 of the Securities Exchange Act).

I find therefore that Young and Kirby went to the limit of permissible predictions of the future when they stated in the annual report for 1949 that the outlook for eventual profits in IDS was considered to be unusually promising.

Taking a broad view of the situation, it seems to me that the documentary record stating and even overstating the recent prosperity of IDS and the frank expression of hope for an unusually promising future, negate the contention of general counsel for plaintiffs and objectants that Young and Kirby did not adequately inform the stockholders of Alleghany of IDS future prospects.

The defendants further claim that the defense of laches is properly interposed to the claim for rescission based on the allegedly inadequate disclosure of earnings of IDS.

A party entitled to rescind a transaction for fraud must assert that right expeditiously. This is particularly true of transactions such as the present one, which involved the market price of securities subject to considerable change in the course of time. The party entitled to rescission cannot delay and await market developments before deciding whether he wishes to rescind the transaction or to leave it undisturbed (See McLean *vs.* Clapp, 141 U. S. 429; Strong *vs.* Strong, 102 N. Y. 69).

While it is unnecessary for me to decide the point, it would seem to be at least arguable that Alleghany's annual reports for 1950, 1951 and 1952 (Exhibits 18, 19 and 20),

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which fully revealed the drastic increase in the earnings of IDS, gave to the stockholders of Alleghany all the information which was allegedly withheld from them in April, 1950. Nevertheless, the present actions were not brought until 1954, at which time the market price of IDS had risen to about $200 per share.

Under the circumstances, the defense of laches would appear to have considerable merit and should properly be taken into account in considering the fairness of the settlement.

In addition to the allegedly inadequate disclosure of the earnings and prospects of IDS, it is contended that the proxy statement of April 6th, 1950 and the supplemental letter of April 26th, 1950, were inadequate in other respects. Thus it is urged:

(1) The annual report of IDS did not fairly state the company's financial position.

(2) Alleghany's stockholders were misled regarding the market value of IDS stock.

(3) Alleghany's Board of Directors acted without a quorum in approving the exchange transaction on December 6th, 1949.

(4) The alleged purpose of giving Alleghany's officers an incentive to make the IDS investment successful, was false.

(5) Young and Kirby actually tendered their Alleghany preferred shares to the corporation in May, 1955, rather than in January, 1955.

I shall now proceed to consider these contentions.

The claim that the financial reports of IDS were misleading is said to follow from an interpretation of the testimony of Purcell that the annual statements of IDS did not fairly state its financial position (Purcell 3954-5, 3976-81). Upon examining Purcell's testimony, I do not

find, however, that this interpretation is warranted. Reading the testimony in context, it would appear merely that the IDS reports were too optimistic, because IDS failed to accrue all the reserves it should have (Purcell 3949-3960, 3975-6).

If it be true that the reports painted too favorable a picture of IDS, that claimed fact, far from helping, would defeat the contention that those reports induced the Alleghany *stockholders to part with the IDS stock at* an insufficient price.

I am not impressed with the objectants' contention that the defendants misled the stockholders of Alleghany with respect to the market price of IDS. Objectants say that on January 20th, 1950 (the date of the alleged stock tender by Young and Kirby), the market price of IDS was above rather than below the $8.1453 price, which Young and Kirby offered. The record does not support that contention. Exhibit 124 shows in January, 1950, a bid price up to $6.50 per share for IDS Class A stock, but no offerings. Exhibit 475, however, shows actual sales in July, 1950, of IDS stock at prices varying from $5.75 to $6.50 per share. Exhibit 422 shows that Purcell purchased various amounts of IDS Class A stock in the market, on January 14th and January 16th, 1950, and again on February 6th, 8th and 10th, 1950, at prices ranging from $6.38 to $7.50 per share.

Objectants claim that Young artificially depressed the market price of IDS stock by inducing Purcell to refrain from making purchases of IDS stock which he otherwise would have made. The record discloses that Young told Purcell in December, 1950, he should not worry about the stock market and that he would get IDS stock from him and Kirby (page 2742). Despite this statement by Young, Purcell did buy various amounts of IDS stock in the market in January and February, 1950. I do not believe that the statement by Young constituted an attempt to artificially depress the market.

Objectants also contend that the proxy statement did not reveal the recent rise in the market price of IDS. The

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fact, however, is that the proxy statement of April 6th, 1950, advised Alleghany stockholders that from December, 1949, to March 31st, 1950, the market price of IDS had risen from $5.50 to $9.50 per share (Exhibit 30). The stockholders were thus put on notice that the market price had advanced beyond the $8.1453 price which Young and Kirby were paying for the IDS Class A stock.

It is true that after March 31st, 1950, the market price of IDS continued to rise further, to a high of $11 or $12 per share in April, 1950. I cannot agree with objectants, however, that this rise imposed an obligation on defendants to keep the stockholders of Alleghany informed about the day to day developments of the market. After all, the market price of IDS was not a secret; it was a public record; and the stockholders of Alleghany were informed of the generally rising tendency of the market price of IDS.

Objectants also complain of the absence of a quorum at Alleghany's Board meeting of December 6th, 1949, at which the IDS transaction was approved. At the time of that meeting, Alleghany had ten directors. The resolution approving the IDS transaction was adopted unanimously by the seven directors who were present. Four of those present, namely, Young, Kirby, Purcell and Anzalone, had a personal interest in the transaction. The three disinterested directors were less than one-third of the ten members of Alleghany's Board. However, Alleghany's Certificate of Incorporation provided at the time, in Article Eighth, "that a director who was financially interested in a contract or transaction with the corporation may be counted in determining the existence of a quorum at any meeting, and may vote to authorize such contract as if he were not personally interested."

Accordingly, the fact that four of the directors had a personal interest did not destroy the existence of a quorum.

It is clear that a directors' resolution alleged to be ineffective can be ratified by the stockholders. In this instance, the resolution of December 6th, 1949 was approved

by the stockholders on May 3rd, 1950. The proxy statement and the supplementary letter to the stockholders fully revealed the personal interest of the directors in the exchange transaction. Accordingly, I do not feel that this argument of the objectants has much weight.

Objectants next dispute the truthfulness of the declared purpose of the exchange transaction to provide the officers receiving IDS shares "with a further incentive to make successful the operations of that company in which Alleghany continues to hold a large controlling interest" (Exhibit 30, page 6).

Objectants say that the IDS stock could not operate as an incentive to Young and Kirby because these men had no employment contracts obligating them to work for any period of time for IDS. That reasoning strikes me as somewhat strained. If Young and Kirby bought and paid for a substantial amount of IDS stock, it would be to their interest to enhance its value. They could do so only so long as they remained the principal officers of Alleghany, for if they should leave Alleghany, their own non-voting Class A shares would give them no interest at all in the management of IDS. The acquisition of a substantial block of IDS Class A stock would therefore be an incentive for Young and Kirby to remain in the employ of Alleghany and to use their best efforts to enhance the value of IDS.

Objectants further argue that there is no proof that Young and Kirby after acquiring IDS stock, devoted more time to IDS than they had theretofore. I do not think that the effort of a corporate officer can be measured simply by the number of hours expended. The purpose of an incentive stock offer to a corporate officer is to stimulate his ingenuity and imagination in dealing with the business entrusted to him. It would seem that the sharp rise in the earnings and in the market value of IDS is some evidence that the incentive to Young and Kirby in the form of IDS stock was not wasted.

Objectants also urge that Young and Kirby tendered their Alleghany preferred stock for exchange against IDS

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stock in May, 1950, rather than January, 1950, and that the proxy statement of April 6th, 1950 misstated the facts when it asserted that those tenders had been made on January 20th, 1950.

There can be no doubt that the physical tender of shares was not made until May, 1950. It could not have been made before that time since the entire exchange was in terms subject to the approval or disapproval of the stockholders of Alleghany at their annual meeting on May 3rd, 1950.

It is clear that Young's and Kirby's formal confirmation letters, dated as of January 20th, 1950, (Exhibits 28 and 204) by which they offered to exchange their Alleghany preferred shares for IDS Class A shares, were not reduced to writing until a month or so after that date. The memorandum from Purcell to Young, dated February 22nd, 1950, contains a notification to Mr. Young that Anzalone was offering only 10 shares of Alleghany preferred stock for exchange, and that Purcell was working matters out so that Young and Kirby could divide between them equally the remaining IDS Class A shares (Exhibit 331).

Assuming then that the letters of January 20th, 1950 were actually written about a month later, the question arises whether the non-disclosure of that fact in the proxy statement is so material as to justify the rescission of the IDS transaction. I do not think so.

Young testified that he and Kirby had committed themselves to the exchange transaction as far back as the time of the directors' meeting of December 6th, 1949, at which the transaction had been approved by the Board (pages 2326-7). I find this testimony plausible and credible. The resolution of December 6th, 1949 refers to the offer of the IDS Class A stock to the officers of the corporation in exchange for Alleghany preferred stock. It was adopted under the auspices of Young and Kirby. Both were present at the meeting. Only Young and Kirby owned sufficient amounts of Alleghany preferred stock to acquire all or most of the large amount of IDS Class A stock to be offered by

Alleghany. It would have been futile for Alleghany's Board to offer the IDS shares to the officers of the corporation unless Young and Kirby stood ready to accept the offer.

While other officers of Alleghany were likewise to have an opportunity to acquire certain of the IDS stock, an opportunity of which Anzalone availed himself, it is clear from the minutes of the directors' meeting of December 6th, 1949, that the balance of the IDS stock would be acquired by Young and Kirby.

The testimony and the contemporaneous written record support the contention of Young and Kirby that they were committed to purchase the stock as far back as December 6th, 1949. Accordingly, it does not make any difference whether their formal letter of acceptance was actually delivered to Alleghany on January 20th, 1950 or a month later.

The discussion of the date on which Young and Kirby made their tender to Alleghany brings me to the alternative theory of recovery alleged in the first cause of action of the Consolidated Amended Complaint.

As previously stated, the contention is advanced that the price payable by Young and Kirby for IDS shares was to be not less than the market price on the "final exchange date," and that the "final exchange date" was the date in May, 1950, on which Young and Kirby actually surrendered their Alleghany preferred stock and received in exchange therefor the IDS Class A stock.

General counsel for the plaintiff, in their brief, now take the position that the documents adduced at the hearing do not appear to sustain their original claim, and that the "final exchange date" was indeed January 20th, 1950. I am inclined to agree with the [illegible] position taken by general counsel for plaintiffs.

The offer of the IDS stock to Alleghany's officers was coupled with an offer of other portfolio securities to the stockholders of Alleghany. In connection with the offer made to the stockholders, the resolution of Alleghany's

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executive committee of December 15th, 1949. (Exhibit 364-F) fixed January 20th, 1950 as the last date for the "acceptance or rejection of such tenders" by the stockholders; and the invitation for tenders which Alleghany issued to its stockholders on December 17th, 1949 (Exhibit 192) likewise set January 20th, 1950 as the date for the "acceptance or rejection of tenders."

The last mentioned document also provided that the price which the stockholders would have to pay for the portfolio securities would be their market value as of January 20th, 1950 (Exhibit 192, page 3).

It therefore appears to me that the entire scheme of the Board resolution of December 6th, 1949 was this: The price to be paid for the IDS shares, just as the price to be paid for the other portfolio securities, should be determined by their market value as of the date which the executive committee would select as the final exchange date; and the executive committee did select January 20th, 1950 as the final exchange date. The treatment of IDS stock was to differ from that of the other portfolio securities only in one respect:

If the market price of IDS stock on the final exchange date (i. e. January 20th, 1950) should be lower than their cost to Alleghany, then the officers would have to pay the cost price rather than the market price. As I have previously indicated, the market price of IDS on January 20th, 1950 was actually lower than its cost to Alleghany, and the officers were therefor required to pay and did pay $8.1453 per share, which was Alleghany's cost.

It might be mentioned here that the defendants make what I believe to be an untenable contention with regard to this disparity between the market price of IDS and their higher cost price in the contractual relations with Alleghany. Defendants say that the conclusive proof that they did not overreach Alleghany lies in the fact that they could have bought the identical shares which they purchased from Alleghany in the open market at a lower price.

This argument assumes that Young and Kirby could have bought this quantity of shares in the open market without materially affecting the price.

It is my conclusion that the market in IDS during the period in question was so thin as to make these hypothetical purchases altogether unlikely. Any such purchases, to my mind, would have sent the price up materially. In this respect I agree with general counsel for plaintiffs and the objectants.

In reviewing the first cause of action, it is appropriate to point out that assuming the defense of laches is overruled, the amount involved, if the remedy of rescission is to be granted, is very large indeed. Objectants estimate that in that event, Alleghany's recovery would amount to about $15,000,000 and in view of recent market developments, even more. General counsel for plaintiffs took into account that both Young and Kirby disposed of part of their IDS shares in the intervening years, and estimate the recovery at about $3,237,000 against Young and at $5,493,000 against Kirby. If rescission were rejected, but if plaintiffs were permitted to recover on their alternative theory, the recovery would amount to about $290,000.

It is because I am mindful of the extraordinary size of the claims involved in this cause of action that I have subjected it over a long period of time to the closest scrutiny.

The merits and demerits of the claims have been presented with a thoroughness worthy of a sharply contested trial on the merits rather than of a settlement hearing.

While I am not called upon to reach a final and definite conclusion as to the foreseeable success or failure of the first cause of action, it is my considered opinion that the substantial defenses above reviewed militate against the probability of success, and warrant the conclusion that a trial Court would give judgment to the defendants on the merits and, *a fortiori*, on the claim for rescission.

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THE SECOND CAUSE OF ACTION.

The New York Central Transaction and Allegedly Related Matters.

The IDS Transaction of 1953.

It is claimed that Alleghany in December, 1953, sold a large block of IDS stock to the Murchisons as an inducement to enlist their assistance and the assistance of Richardson in an anticipated proxy contest for control of New York Central. The facts are:

Alleghany sold to Murchison Brothers 27,500 common and 5,650 Class A shares of IDS at $125 per share and took as evidence of the purchase price a 4 per cent promissory note of the purchasers, payable over five years.

The Complaint alleges that the purchase price was inadequate inasmuch as the consolidated net earnings of IDS for the year 1953 amounted to $27.20 per share and a further substantial rise in the market price of IDS was foreseeable by the defendants by reason of a 5-for-1 stock split carried out on April 20th, 1954.

The market price of IDS stock rose to $200 per share within four months after the sale, and had risen to $400 per share at the time of filing the Complaint.

It is asserted that Alleghany had no business reason for selling a substantial portion of its control stock of IDS or for committing a substantial part of its funds to a long term personal loan to Murchison Brothers, at a return of only four per cent per annum.

The evidence does not establish any unfairness in this transaction nor was there any evidence from which it might be held that the sale of the IDS stock was related to the efforts of Alleghany to gain control of the New York Central.

In the light of that finding, the transaction must be considered as one with a non-fiduciary outsider, from which the directors of Alleghany derived no personal profit.

The evidence clearly indicated:

(I) The IDS sale was made to take advantage of a tax loss carry-forward of Alleghany of approximately $3,000,000 which would expire on December 31st, 1950, and the IDS stock was the only security in Alleghany's portfolio on which there was sufficient unrealized appreciation to take advantage of this tax loss carry-over (Wallace, pages 1396-7, 1402, 1406).

(II) Alleghany was not subjected to risk in accepting the Murchison Brothers note in payment for the stock in view of the financial responsibility of the Murchisons and the fact that the note was fully collateralized. In addition, as an added incentive in making the loan, Alleghany was to receive one-half of any appreciation in the value of the pledged collateral (Exhibit 122).

(III) Alleghany obtained a price for the IDS stock which was approximately 25 points per share above the then market price (Exhibits 122, 124).

(IV) The 5-for-1 stock split of IDS had been recommended by the Board of Directors on August 4th, 1953 (Exhibit 283) and the resolution communicated to the public by a press release on August 5th, 1953 (Exhibit 285).

Carter, on behalf of Murchison Brothers, in dealing with Young on this sale was fully aware of the previous authorization of the 5-for-1 split by the Board of Directors, and in his opinion the approval of the stock split by the S. E. C. was problematical (page 450).

Young tried to use the stock split in "horse-trading" with Murchison on the price of the IDS stock, although

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he knew any market appreciation as a result of the proposed split-up had been reflected in the market at the time he talked to Carter (pages 2375-6; 2937-9).

Carter had no inside information pertaining to IDS other than regularly published reports (Carter, pages 597-604).

> (V) At the time Alleghany and Murchison Brothers negotiated the sale of IDS stock, in late November and early December, 1953, the Murchisons knew nothing of the alleged intention of Young to acquire control of Central. Indeed, Young denies having had any such intention at that time, and there is no evidence to the contrary.

Young testified that the first discussion between him and the Murchisons or any of their representatives concerning Central did not take place until February, 1954 (Young, pages 2364-5, 2378-9).

While evidence was offered as to other factors tending to make the sale of IDS stock to Murchison Brothers in 1953 a prudent transaction, the foregoing résumé is sufficient in my opinion to establish that there is no evidence connecting this sale with any alleged conspiracy on the part of the defendants to acquire control of the New York Central Railroad. On the testimony in this record there does not appear to be any real possibility of recovery on this aspect of the case.

Divestment of Control of C & O.

During the period from 1929 to 1944, Alleghany held approximately 2,000,000 shares of Chesapeake & Ohio stock and controlled that important carrier (Exhibit 103). Alleghany, at Young's behest in 1944, reviewed its investment in C & O because of Young's concern about the future of the coal industry, upon which the earnings of the C & O

to a large extent were dependent (Young, 2300; Exhibit 114, pages 8 and 9; Exhibits 15, 16 and 17).

Alleghany thereafter decided to liquidate its C & O investment, having in mind eventual decontrol. These holdings had been reduced in 1953 to about 104,854 shares (Young, page 2614; Exhibit 103).

Young concluded in December, 1953, that it would be advisable for Alleghany to sell its remaining shares in C & O with a view towards seeking representation on the New York Central Board. So long as Alleghany controlled C & O, the restrictions imposed by the I. C. C. made it impossible for Alleghany to acquire control of the Central.

Some of Alleghany's earlier holdings in C & O had been sold in 1951 to Cyrus Eaton, an investment banker, of Cleveland, Ohio (Exhibit 209). Eaton, in January, 1954, owned or controlled 146,000 shares of C & O and served as a director of the road (Exhibit 116). He was consequently a logical purchaser of Alleghany's holdings in C & O.

The Complaint alleges that the sales price of $34.29 per share for Alleghany's 104,854 shares which were sold to Eaton in January, 1954, was inadequate because the stock constituted control of the C & O and should have commanded a price higher than market.

The Complaint alleges that a bargain price was given to Eaton in return for his making available to Young and Kirby the voting power of the 800,000 Central shares then owned by C & O by means of their sale to Murchison and Richardson.

There was no evidence at the hearings to establish any understanding between Young and Eaton that Eaton was to help Young in his proxy fight by making the votes of the 800,000 Central shares in the C & O portfolio available to Young by selling them to Murchison and Richardson. Young expressly denied that there was any such understanding (pages 2627-28). His denial is neither contradicted nor implausible. Moreover, it appears doubtful

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that the shares sold by Alleghany constituted a control block. They amounted to but 1.31 per cent of the outstanding voting stock, and Eaton at the time of the sale already owned or controlled a larger amount of C & O stock—1.82 per cent, and the sale price was equal to the market price (Exhibit 272).

Considering that in the hands of any purchaser but Eaton the shares would have been ineffective to achieve control, there is no basis for finding that any price in excess of the market price could have been obtained on the sale.

The 200,000 Shares of Central Stock Purchased by Young and Kirby.

Young and Kirby during the period from December 8th, 1953 to January 19th, 1954, each purchased 100,000 Central shares in the market, at an average cost of $19 per share (pages 2303, 2390-91). These purchases were made with their own money during the period when Young and Kirby contemplated embarking upon a campaign to secure control of the Central for Alleghany. Their intentions were made known to the Directors of Alleghany at a Board Meeting on January 19th, 1954.

The Complaint alleges that in acquiring these shares, Young and Kirby diverted a corporate opportunity of Alleghany and that they thereafter enlisted Alleghany's financial aid in the Central proxy fight for the purpose of increasing the value of their personal holdings of Central stock.

Defendants contend, in answer to this cause of action:

(I) Young and Kirby offered to sell to Alleghany at the Board meeting of January 19th, 1954, the 100,000 shares each had acquired, at cost or market price, whichever was lower (Exhibit 118), and the Board rejected this offer on the ground that the investment was hazardous for Alle-

ghany unless control could be assured, and that it would be to Alleghany's interest for Young and Kirby to hold substantial blocks of Central stock in their own name, in their candidacy for membership on the Board of Directors, on behalf of Alleghany (pages 2391-92).

(II) Alleghany had been advised by counsel that under the terms of the 1945 order of the I. C. C. (Exhibit 102), whereby Alleghany was declared a carrier, on the basis of its control of C & O, there was substantial doubt as to whether Alleghany could vote any Central stock that it held. It was counsel's opinion that this 1945 order of the I. C. C. survived the sale of Alleghany's C & O stock to Eaton. Therefore, substantial purchases of Central stock by Alleghany would not appear wise until its status to vote the stock had been determined.

(III) Substantial quantities of Central stock were always available in the open market and could be purchased by Alleghany if it was deemed desirous to do so. Therefore, the shares purchased by Young and Kirby cannot be said to have been obtained in competition with Alleghany or to have deprived Alleghany of the opportunity to purchase the stock.

(IV) The shares purchased by Young and Kirby were bought long before any likelihood of a proxy fight developed, and at a time when it was Young's belief that the management of Central would accede to his and Kirby's request for representation on the Board.

General counsel, in evaluating this cause of action, asserts that the evidence shows that Central stock was listed on the New York Stock Exchange in December, 1953 and January, 1954, when the Young and Kirby purchases were made, and that the volume of trading was substantial (Exhibit 144). They indicate a belief that there is substance to the defendants' contention that since stock was available to Alleghany in the open market at the time of Kirby's and Young's purchases, they cannot be said to have preempted

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a corporate opportunity. Moreover, general counsel believe that the alleged offer of Kirby and Young at the Alleghany Board meeting of January 19th, 1954, to sell their 200,000 shares to Alleghany, would militate against a recovery on this cause of action.

Objectants contend that the corporate opportunity doctrine when applied to the 200,000 shares purchased by Young and Kirby of Central stock, has substantial merit. They urge that the record does not indicate that Young and Kirby offered at the January 19th, 1954 meeting to sell the 200,000 Central shares to Alleghany, but establishes only that Young set forth to the Board the reasons why he did not think it expedient to offer Alleghany this stock (Exhibit 384).

The verbatim transcript of Mr. Young's remarks lends some support to the objectants' argument, although Mr. Ireland has testified that he and the members of the Alleghany Board of Directors who were present at the meeting clearly understood that Mr. Young's remarks constituted an offer to sell the Central holdings of Kirby and himself to Alleghany.

Counsel for objectants attack the defense predicated upon the statement that it was important in the forthcoming proxy fight for Young and Kirby to appeal to the Central stockholders in the guise of important individual stockholders rather than as spokesmen of a holding corporation (Alleghany), which was seeking to unseat the incumbent management. They allege that the fallacy of this theory is clear from the fact that all proxy material expressly referred to the "Alleghany-Kirby-Young" group, thus indicating the participation of Alleghany in the proxy contest.

Nevertheless, it was an important "selling point" in the proxy contest for Young and Kirby to be able to say that they personally were substantial stockholders of the Central, while the incumbent board members owned comparatively small stock interests.

The objectants assert, with somewhat more plausibility, that there can be no merit to defendants' argument that Central was too speculative an investment for Alleghany in December, 1953 and January, 1954, inasmuch as only two or three months later, on March 15, 1954, Young committed Alleghany to buy 400,000 Central shares from Murchison and Richardson, at their option, at $25 per share. If the Central stock was not too speculative for Alleghany in March, 1954, why was it too speculative in January?

Although this argument of the objectants carries some persuasion, I think that the situation confronting Alleghany in March was quite different from that confronting it in January. In January the only question for Alleghany was whether or not it should invest in Central stock in the hope of deriving a profit from its future market rise. Alleghany's management answered this question in the negative. Since neither Young nor Kirby nor any other Alleghany director or officer could derive personal profit from Alleghany's failure to invest in Central stock, I find this testimony credible.

Alleghany's problem in March 1954 was quite different. It was no longer just the question whether the purchase of some Central shares was a desirable speculation. The fate of the 800,000 share block of Central stock was at stake. The votes cast by this block (which comprised about 12½% of the outstanding Central shares might swing the outcome of the proxy contest one way or the other. In March 1954 these 800,000 shares were owned by Murchison and Richardson. While these men were friendly to Young and Alleghany, they had, at the time, paid only a small part of the price for these shares. Viewing the course of events in the light of common sense, it seems to me likely that Murchison and Richardson wanted to limit their risk and it was for that reason, in addition perhaps to others, that Alleghany entered into a substantial commitment regarding part of the 800,000 share block. What the precise nature of this commitment was will be discussed below. In any event, the

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necessities of the situation in January and March 1954 were so different that I can find no inconsistency between Alleghany's failure to make a Central investment in January and the substantial commitment it undertook in March.

Regardless of the determination of the incidental question just discussed, the fundamental question on this aspect of the case is whether Young's and Kirby's purchases of Central stock in December 1953 and January 1954 appropriated Alleghany's opportunity to purchase an equal number of Central shares if it so desired.

Defendants point out that even after the proxy fight had been concluded, and as late as September, 1954, Central stock was selling at $19 per share. They urge, therefore, that with ample opportunity to buy additional shares of Central, Alleghany was not deprived of a corporate opportunity by the Young and Kirby acquisition.

The success or failure of the corporate opportunity aspect of the second cause of action rests in large measure upon an interpretation of the leading cases.

Objectants and defendants, in their respective briefs, have discussed and analyzed the leading cases of Guth *vs.* Loft, 23 Del. Ch. 255, 5 At. 2d 503 (1939); Turner *vs.* American Metal Company, 268 App. Div. 239, 50 N. Y. S. 2d 800 (First Department 1944), appeal dismissed 295 N. Y. 822; Litwin *vs.* Allen, 25 N. Y. S. 2d 657, 686 (Supreme Court 1940); Everett *vs.* Phillips, 288 N. Y. 227, 43 N. E. 2d 18 (1942); and Marcus *vs.* Otis, 168 F. 2d 649 (CA 2d (1948) modified 169 F. 2d 148.

In the final analysis, the application of the principles of corporate opportunity depends on the facts. Whether or not a director has appropriated to himself something that in fairness should belong to his corporation, is a factual question to be decided by reasonable inference from objective facts (Guth *vs.* Loft, *supra*, 23 Del. Ch. 277).

The Referee does not believe that the purchase by directors in a very active market, with their own funds, of a block of stock constitutes appropriation of a corporate

opportunity where the purchase by directors in no wise prevents the corporation from making similar purchases.

Transactions Involving the 800,000 Shares of Central Stock.

After Alleghany had divested itself of control of C & O, and subsequent to the purchase of 100,000 shares of Central stock each by Young and Kirby, the latter requested admission to the Board of Directors of Central. This request was refused by the Central Board on February 10th, 1954 (Exhibits 170-171).

Young and Kirby then announced their intention to engage in a proxy fight with a view toward unseating the Central's incumbent management at the next annual stockholders' meeting of May 26th, 1954 (Exhibit 120).

The 800,000 shares of Central stock, held by C & O, constituted about 12½ per cent of the Central's voting stock. By order dated June 5th, 1945, the I. C. C. had directed that C & O deposit these 800,000 shares of Central stock with the Chase National Bank, under a voting trust agreement, pursuant to which the bank was empowered to vote the shares (Exhibit 100).

The Chase Bank's representatives on the Central Board voted against granting Young and Kirby membership at the meeting of February 10th, 1954. It thus was apparent that if the Young and Kirby proxy fight was to be successful, it was important to see that these 800,000 shares were voted for the Young-Kirby-Alleghany slate of directors at the forthcoming election, or at least would be neutralized so that they would not be voted against them.

After Central rejected Young's and Kirby's request for admission to its Board, David Baird, a friend of Young's, contacted him and suggested the formation of a syndicate to acquire the 800,000 shares of Central held by C & O.

Alleghany's executive board, on February 12th, 1954, authorized its officers to join the syndicate for the purchase

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of these shares, and to invest up to $5,000,000 for such purpose (Exhibit 128; pages 2361-3; 3124-25).

Despite this authorization, only a total of 11,000 shares were purchased by Alleghany prior to the annual stockholders' meeting of Central on May 26th, 1954. Young, on February 13th, 1954, was visited in Palm Beach by Donald H. Carter, a friend and business associate of the Murchisons. Young informed Carter of the attempt to form a syndicate to purchase the 800,000 shares of Central stock, and Carter advised Young that the Murchisons might be interested in purchasing the stock if the price and other terms were agreeable.

Since the transaction involved a financial consideration of such magnitude that Clint Murchison was loath to undertake it alone, he discussed with a fellow Texan, Sidney Richardson, a proposition pursuant to which each would buy one-half of the block (pages 454-465, 957-60, 2363).

It appeared that even if they made a joint purchase, arrangements would have to be made for substantial financial assistance by way of loans. Murchison inquired of Young whether Alleghany would help to finance the purchase of the shares (pages 2365-6, 2638-9).

On February 17th 1954, Young took up with Alleghany's Board of Directors a possible participation in the proposed Murchison and Richardson purchases of the 800,000 shares by way of substantial loans to finance the purchase. The Board of Directors authorized Young and the other officers to lend up to $5,000,000 to Murchison and Richardson, on the basis of interest-bearing promissory notes (Exhibit 129).

On February 23rd, 1954, Alleghany loaned $2,500,000 to Murchison and Richardson (Exhibits 216, 219). Murchison and Richardson on the same date purchased 800,000 Central shares from C & O at $25 per share, for an aggregate of $20,000,000. The market price of Central stock at that time was about $24 per share (Exhibit 165). Murchison and Richardson made a down payment of $2,500,000 from the funds advanced by Alleghany, and the balance of the pur-

chase price was evidenced by promissory notes (Exhibits 130, 131).

Thereafter written agreements were entered into, in March 15th, 1954, which we summarize here (Exhibits 137-143).

(I) Alleghany loaned $5,000,000 to Murchison and $2,500,000 to Richardson, evidenced by short term promissory notes, repayable on or before September 15th, 1954, with interest at 4½ per cent (Exhibits 137, 138). Alleghany's earlier advances of $2,500,000 were repaid the same day (Exhibit 219).

(II) Alleghany granted Richardson an option to sell it 100,000 Central shares at $25 per share, the said option being exercisable between July 15th and September 15th, 1954. Upon the exercise of the option Richardson and Alleghany were each to place 100,000 shares in a joint venture, with the profits or losses to be divided equally between the parties (Exhibit 142).

(III) Alleghany granted Murchison a similar option to sell it 100,000 Central shares at $25 per share, exercisable between July 15th and September 15th, 1954, with a provision that upon the exercise of the option Alleghany and Murchison were each to place 100,000 Central shares into the joint venture, with the profits or losses to be divided equally between them. Murchison was to have the privilege of substituting Murchison Brothers in his stead as a party to the joint venture (Exhibit 141).

(IV) Alleghany granted Murchison an additional option to sell it 200,000 Central shares at $25 per share, exercisable between July 15th and September 15th, 1954. This option agreement made no reference to any joint venture (Exhibit 140).

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(V) Kirby granted Richardson a loan of $5,000,000, repayable on or before September 15th, 1954, with interest at 4½ per cent. Kirby also granted Richardson an option to sell him 200,000 Central shares at $25 per share, exercisable on certain dates in June or July, 1954. There was no reference to any joint venture with respect to this option (Exhibit 139).

Before proceeding with a discussion of the ensuing events, it is significant to note, as bearing on the charge that Kirby's conspiracy with Young placed Alleghany in a disadvantageous position, that Kirby placed himself in exactly the same position as Alleghany. This would make Kirby a victim of his own conspiracy.

The written agreements above summarized were approved by Alleghany's executive committee (Exhibits 129, 134-36); and were set forth in the Alleghany-Young-Kirby proxy statement (Exhibit 125).

Several weeks after the written agreements of March 15th, 1954 were executed, on April 8th, 1954, a supplemental agreement was executed. Whether or not this supplemental agreement was executed pursuant to antecedent oral agreements will be discussed hereafter. By these agreements, Alleghany was guaranteed against loss on any of these joint ventures in the stock of Central. It was also guaranteed a return of 4½ per cent on its investment. However, since item "IV" *supra* (Murchisons' "put" as to 200,000 shares) would not result in a joint venture, the aforesaid guarantees against loss did not apply to it.

The Murchisons and Richardson thereafter entered into a series of additional contracts with Alleghany, dated July 15th, 1954, which further modified the written agreements of March 15th, 1954. These contracts may be summarized as follows:

(I) Alleghany and Murchison Brothers entered into a joint venture designated AM venture No. 9, to purchase

300,000 Central shares from the senior Murchison at $25 per share for a total price of $7,500,000. Each party was to pay one-half of the purchase price and Alleghany was to loan Murchison Brothers $3,750,000 that it needed for its one-half. Alleghany was to have the right to vote not only its 150,000 shares but rather all 300,000 shares of the joint venture, and the further privilege of pledging all shares in the joint venture as security for any debt it might owe or incur. By this agreement all the profits were to be equally divided between Alleghany and the Murchisons, but Alleghany was to be held harmless against all losses. The guaranty of the Murchison Brothers was further guaranteed by the senior Murchison (Exhibits 151, 162, 289). In addition, Alleghany was guaranteed a minimum return of 4½ per cent on the joint venture.

(II) Alleghany entered into a joint venture with Richardson, called AR venture No. 1, to purchase 300,000 Central shares at $25 a share, for a total of $7,500,000. The shares comprising the joint venture were obtained by having Richardson place 150,000 of his shares in it and by having Alleghany put in 150,000 shares by virtue of the purchase of 50,000 shares from Richardson and 100,000 shares from the senior Murchison.

The terms and arrangements regarding AR venture No. 1 were similar to the terms and arrangements involving AM venture No. 9. Here too Alleghany kept the profits, was guaranteed a return of 4½ per cent and was wholly guaranteed against losses.

At about the time that the agreements above described were executed, Richardson exercised his option under the March 15th, 1954 agreement to sell 200,000 Central shares to Kirby, at $25 per share, for an aggregate price of $5,000,000, and the purchase price was applied in discharge of Richardson's indebtedness to Kirby. Kirby's acquisition of the 200,000 shares was without any obligation to place them in any joint venture agreement (Exhibit 157).

The net result of the July 15th agreements and transactions as above outlined was to place Alleghany in pos-

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session of 300,000 Central shares, at a cost of $25 per share, for a total price of $7,500,000 with an indemnity against loss from the investment and a right to vote not only these 300,000 shares but the additional 300,000 shares that were in the joint venture, and to use all of the shares as security for its debts.

Alleghany was also repaid earlier loans to Murchison, of $5,000,000 and to Richardson of $2,500,000, and in lieu thereof granted new 4½ per cent loans to Murchison Brothers and Richardson, in the amount of $3,750,000 each.

Subsequently (as part of the settlement agreement) under date of November 30th, 1954, the joint venture agreement, AM venture No. 9, was amended by strengthening the indemnity and guaranty agreement of the Murchisons. The July 15th agreement, in setting up certain guarantees for Alleghany by the Murchisons, had embodied by reference an earlier agreement between the same parties, dated June 30th, 1951 (Exhibit 154). By the terms of this earlier agreement, which was in effect a master agreement covering all joint ventures between Alleghany and the Murchison Brothers, the Murchison Brothers undertook to indemnify Alleghany against any loss which it might suffer from all joint ventures taken globally or in the aggregate. Thus Alleghany's profits in one venture would have to be offset against losses on others and the indemnity agreement would only become effective if a net loss remained. Murchison Brothers, under the November 30th, 1954 agreement, agreed that its indemnity obligations concerning the 300,000 Central share venture, known as AM venture No. 9, are to stand independent of all other joint ventures, and if the Central venture should result in a loss to Alleghany, Murchison Brothers were required to indemnify it even though the other ventures between the parties might have yielded profits (Exhibit 158).

A great deal of testimony concerning these agreements has been offered by both sides. Defendants Young and Murchison testified that the written agreements of March

15, 1954 did not accurately set forth the oral understanding they had reached prior to that date. That oral understanding, they say, was substantially along the lines ultimately laid down in the agreements of July 15, 1954. The written agreements of March 15, 1954, had been prepared by subordinates who had misunderstood the instructions given to them. Under the hectic conditions of the heated proxy fight which Young and Alleghany were then waging against the Central management, the error in the written March agreements was overlooked. It was partially corrected by the supplemental agreements of April 8, 1954. Finally, after the proxy fight was over, Young got around to studying the March agreements. At a meeting in Dallas, Texas, he called Murchison's attention to the discrepancies with their oral understanding, and the error was thereupon rectified by the agreements of July 15, 1954.

General counsel for plaintiffs are not persuaded that this version of the events is accurate, and the objectants likewise attack it. They consider it as intrinsically implausible and as inconsistent with the testimony of Stockhausen and Ireland, the attorneys who drafted the March agreements. According to these parties, it is more reasonable to believe that the March agreements truly reflected the then understanding between Young and Murchison and that the changes made by the July agreements were impelled by the threat of these stockholders' derivative actions which had been instituted during the time between March and July 1954.

The evidence thus presents a sharp issue of fact, with much to be said for either side of the controversy. The testimony of Stockhausen and Ireland to which I have given careful consideration tends in the same direction, although I do not consider it conclusive. On the other hand, it is unquestionable that the modification agreements of April and July 1954 involved heavy financial sacrifices by the Murchisons and Richardson in favor of Alleghany. It is at least arguable that they would not have made these

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sacrifices on account of the interim institution of these stockholders' suits without using the new agreements as a *quid pro quo* for a settlement of the actions. No such settlement was made at the time. It is thus difficult to predict how this fact issue would be determined if this action were to go to trial.

But in the view I take of this case, it may not even be necessary to resolve the fact issue I have just discussed. This would appear from a consideration of the legal grounds on which defendants' liability is sought to be predicated.

There are two theories of liability. One of them is that the agreements were so unilaterally favorable to the defendants and harmful to Alleghany as to constitute necessarily a breach of fiduciary duty by the Directors of Alleghany in which the Murchisons and Richardson joined as co-conspirators. The other theory, spelled out in the fourth cause of action of the complaint, views the acquisition of Central stock by the Murchisons, Richardson and Kirby as depriving Alleghany of a corporate opportunity lawfully belonging to it, with consequent liability on the part of said defendants and of Young who made the diversion possible. I shall separately review each of these theories. For the purpose of my discussion I shall assume, but without any means so finding, that the agreements of March 15, 1954, represented the actual understanding then existing between Alleghany, the Murchisons and Richardson.

On that assumption it cannot be denied that the March agreements were unduly favorable to Murchison and Richardson and unduly burdensome to Alleghany. Details aside, Murchison and Richardson were granted options ("puts") to sell up to 400,000 Central shares to Alleghany at $25 per share. If at the exercise time, i.e., between July 15 and September 15, 1954, the market price of Central should be below 25, Murchison and Richardson could unload 400,000 of their Central shares on Alleghany at 25; whereas, if the market price should during the exercise period rise above

25, Murchison and Richardson could keep the 400,000 shares for themselves. Alleghany received no countervailing benefits for the privileges thus granted to Murchison and Richardson. Had this agreement been carried out it might well have involved the defendants in liability.

But actually the agreement was not carried out. When July 15, 1954, the beginning of the exercise period arrived, it was replaced by a new agreement. Unfair as the earlier one had been, the new agreement was unquestionably altogether fair to Alleghany. Under it Alleghany acquired, without risk of loss, and with assurance of a guaranteed 4½% return, a one-half interest in joint ventures covering 600,000 Central shares. At the time of the original settlement agreement and of the initial hearings before me, Alleghany's (unrealized) profits from these ventures were between $5 and $7 million. I fail to see how defendants can be held liable for a contract which was never carried out.

But that is precisely what the objectants contend for. They argue that Young and Kirby and the other Directors of Alleghany violated their fiduciary duties in making the March 15, 1954 agreements and that they are therefore liable for all the profits of that deal, despite its subsequent rectification (Reply Brief for Rosen, p. 30). That argument, it seems to me, begs the question. Inasmuch as the March agreements were abandoned, they resulted neither in injury to Alleghany nor in profits to the individual defendants for which the latter could be held accountable.

I am not unmindful of the fact that, under the March 15, 1954 agreements, Alleghany also loaned $5 million to Murchison and $2.5 million to Richardson. But these short-term loans carried 4½% interest which was an adequate return (page 2369), and they were repaid on July 15, 1954 at which time they were replaced by new loans of $3.75 million each to Murchison Brothers and Richardson in connection with the agreements of that date. I can see no impropriety in these loans.

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The second theory on which defendants are sought to be held liable is that the acquisition of the 800,000 Central shares was a corporate opportunity belonging to Alleghany which was, in part at least, diverted from it. This claim is pleaded in the fourth cause of action of the complaint, but I shall consider it, out of its numerical order, at this point because it is so closely related to the phase of the second cause of action hereinabove discussed.

THE FOURTH CAUSE OF ACTION.

The Corporate Opportunity Doctrine.

This cause of action alleges that it was a corporate opportunity of Alleghany, in February and March, 1954, to acquire the 800,000 shares of Central stock. Alleghany ultimately was permitted to acquire only 300,000 of these shares (under the agreements of July 15, 1954), while the remaining 500,000 shares wound up in the hands of Murchison Brothers (150,000 shares), Richardson (150,000 shares), and Kirby (200,000 shares). The complaint alleges that these 500,000 shares should likewise have gone to Alleghany, and it demands that they be impressed with a trust *ex maleficio* in favor of Alleghany.

Subsequent to the close of hearings before me, the market price of Central stock declined and dropped below $25 per share. I have considerable doubt whether the claims under the corporate opportunity doctrine are not seriously impaired by these market fluctuations in Central stock. The Murchison Brothers and Richardson and Kirby acquired their 500,000 Central shares at a cost to them of $25 per share. If Alleghany were to take over these shares on the theory of a constructive trust *ex maleficio* it would have to reimburse the present owners for their cost of $25 per share. To sustain the corporate opportunity claim when Central stock was selling below $25 per share may thus hurt Alleghany instead of helping it. Nevertheless, since the market price of Central stock has now risen above $25 per share and may continue to rise before this

case is finally decided, I shall consider the corporate opportunity claim on the merits.

The doctrine of corporate opportunity forbids directors, officers and other fiduciaries to seize for themselves a business opportunity that is presented to their corporation and is within the scope of its activities and of present or potential advantage to it. The proceeds of a corporate opportunity unlawfully appropriated may be impressed with a constructive trust in favor of the corporation. See *Blaustein* v. *Pan American P. & T. Co.*, 293 N. Y. 281 (1944); *Turner* v. *American Metals Co.*, 268 A. D. 239 (1st Dept., 1944), App. Dism. 295 N. Y. 822 (1946); *Perlman* v. *Feldmann*, 219 F. 2d 173 (C. A. 2, 1955).

The doctrine is subject to certain limitations. Not every business venture which might be advantageous to a corporation and which is within the scope of its activities constitutes a "corporate opportunity" within the purview of the doctrine which excludes the directors and officers from embracing that opportunity for themselves. The rule becomes operative only if, at the critical time, the corporation had a "tangible expectancy" in the property in question. Thus the *Blaustein* case, *supra*, at page 300, contains this holding of the Court of Appeals:

> "The rule which permits a court of equity to impress with a constructive trust property which is the product of an appropriation of a business opportunity by a corporation director or officer or a majority stockholder owing some form of fiduciary duty, is not satisfied by proof that after the property is appropriated, it occurs that it would have been useful in the corporation's business. The lack in the present case is the essential proof that at the time the properties in question were acquired by SO & G they were recognized or identified as properties in which Pan Am had a tangible expectancy—a right which in its nature was inchoate."

Numerous authorities from diverse jurisdictions are cited by the Court of Appeals in support of this proposition.

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The first question before me is, therefore, whether at the time or times of the alleged appropriation by defendants the 800,000 Central shares were recognized or identified as properties in which Alleghany had a tangible expectancy. The critical dates are February 23, 1954 when Murchison and Richardson bought the 800,000 shares from the C & O, March 15, 1954 and July 15, 1954, the dates of the agreements between Alleghany, Kirby, the Murchisons and Richardson.

Did Alleghany have a tangible expectancy in the 800,000 Central shares on February 23, 1954? The shares had not been offered to it, nor had it made an attempt to buy them. But on February 12, 1954, Alleghany's executive committee had authorized the officers to invest up to $5,000,000 in a syndicate to acquire these shares (Ex. 128). Assuming that this resolution created a "tangible expectancy" on Alleghany's part, I still cannot find that this expectancy was diverted from Alleghany. Since the total price of the 800,000 shares was $20,000,000, Alleghany's $5,000,000 would have bought only one-fourth of the block, i. e. 200,000 shares. The "tangible expectancy" if such it was, related therefore only to 200,000 out of the 800,000 shares. On February 17, 1954, Alleghany's board of directors authorized the officers to lend up to $5,000,000 to Murchison and Richardson to assist them in the purchase of the 800,000 shares with a view that Alleghany participate in part, "initially" by way of loans (Ex. 129). Alleghany did lend Murchison and Richardson $2,500,000 on February 23, 1954. Thereafter, on March 15, 1954, pursuant to further executive committee resolutions (Exs. 129, 134-136), the loans were increased to $7,500,000. Finally on July 15, 1954, Alleghany did receive 300,000 out of the 800,000 Central shares. This was more than the 200,000 shares in which Alleghany by hypothesis, had a "tangible expectancy." I can see, therefore, no basis for the charge that the purchase of the 800,000 Central shares by Murchison and Richardson on February 23, 1954, resulted in the misappropriation of

any property in which Alleghany had a "tangible expectancy."

Turning to the contracts of March 15, 1954, I shall again assume, but without so holding, that these contracts, as written, reflected the actual understanding among the parties. In reviewing these contracts from the point of view of the business opportunity doctrine, I must give separate consideration to Murchison and Richardson on the one hand and to Kirby on the other hand.

So far as Murchison and Richardson are concerned, they were on March 15, 1954 the owners of the 800,000 Central shares. Those shares did not change hands on that date, and I fail to see how any business opportunity regarding those shares was diverted from Alleghany to Murchison and Richardson on March 15, 1954. The fact that the "puts" on 400,000 Central shares which Alleghany, by my hypothesis, granted Murchison and Richardson on that day were unfair to Alleghany and unduly favorable to Murchison and Richardson has been previously discussed. Whatever the legal consequences of that unfairness may have been, it cannot be fitted into any aspect of the corporate opportunity doctrine.

At most it might be said that Murchison and Richardson had difficulties paying the balance of the purchase price for the 800,000 shares which they owed the C & O. Alleghany helped them out by lending them an additional $5,000,000 (over and above the $2,500,000 previously loaned). But these loans, granted for the relatively short period of six months and bearing interest at the adequate rate of 4½%, gave Alleghany no right or interest in the Central shares. Furthermore, Alleghany's loans of $7,500,000 constituted only 37.5% of the total financing which Murchison and Richardson obtained in order to pay the $20,000,000 purchase price for the shares. Alleghany ultimately received 37.5% of the block of Central stock (i.e. 300,000 out of 800,000 shares). Thus even if it were thought that Alleghany, by financing part of the transaction, became entitled

to share proportionately in the proceeds of the transaction, I cannot find that Alleghany received less than was due it under the strictest principles of fair and equitable dealing. I see no basis whatever for holding that Alleghany had any right, in equity and justice, to all of the 800,000 shares.

So far as Kirby is concerned, he granted Richardson on March 15, 1954, an option (a "put") to sell 200,000 Central shares to Kirby at $25 per share. This "put" was unilaterally advantageous to Richardson without any countervailing benefit to Kirby. Certainly Alleghany cannot complain that it was deprived of an "opportunity" to enter into such a disadvantageous transaction with Richardson.

What I have said so far disposes also of any claim that the contracts of July 15, 1954 deprived Alleghany of any business opportunity lawfully belonging to it. Under these contracts Alleghany acquired 300,000 Central shares. It had no "tangible expectancy" whatever to acquire the remaining 500,000 shares which belonged to the Murchisons and Richardson. Murchison Brothers and Richardson each retained 150,000 of these shares; and Richardson sold 200,000 to Kirby pursuant to the "put" which Kirby had theretofore granted. Kirby had to pay $25 per share although the market price of Central stock in July, 1954 ranged only between 20½ and 23⅜ (Ex. 144). I conclude that if this case were to be tried on the merits, the plaintiffs' chances of prevailing on the basis of the business opportunity doctrine would be slim.

General Counsel for plaintiffs have pointed to another difficulty in applying the doctrine. It is only corporate fiduciaries such as directors, officers and majority stockholders who are barred from preempting a corporate opportunity for themselves. Murchison and Richardson were strangers to Alleghany and owed it no fiduciary duties. They were therefore free to acquire the 800,000 share block of Central stock for themselves, even if it be assumed that Allegany was likewise interested in the block. The objectants counter that Young and Kirby, although fidu-

ciaries of Alleghany, helped Murchison and Richardson in making the acquisition and that all of them must therefore be held as co-conspirators. The resolution of this issue is dictated by my finding that Alleghany was unwilling and perhaps unable to invest more than $5 to $7½ million in the Central block of stock. Within the limits of this available investment, Alleghany did ultimately acquire 300,000 shares of the Central block. With respect to the balance of the stock, there was no impropriety in Young's and Kirby's seeing to it that it wound up in hands friendly to Alleghany, namely, in the hands of Murchison and Richardson and Kirby.

I conclude, therefore, that the 800,000 Central shares transaction affords no basis for recovery either under the corporate opportunity doctrine or on the ground of the alleged unfairness to Alleghany of the March 15, 1954 agreements.

Other Phases of the Second Cause of Action.
The Expenses of the Proxy Fight.

Alleghany engaged in an extensive campaign with Young and Kirby to elicit the vote of Central stockholders in favor of their proposed slate of directors. Total expenditures in the use of proxy solicitors, attorneys, advertising and other promotional efforts to attract the support of Central stockholders amounted to $1,308,733.71 (Exhibit 145). Alleghany advanced the full expense of the proxy fight, pursuant to an understanding with the members of the Alleghany-Young-Kirby slate that ultimately these expenses would be divided among Alleghany and the members of the slate, on the basis of their average holdings of Central stock during the year beginning May 26, 1954 (Exhibits 125, 420).

The Complaint charges that it was improper for Alleghany to advance these payments to underwrite the proxy fight in view of the fact that it owned but 11,400 shares.

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The defendants urge that it was Alleghany's intention to acquire substantial blocks of Central stock in the event that the proxy fight was successful, and that it was for that reason Alleghany advanced the moneys. The truth of this statement is alleged to be established from the substantial nature of Alleghany's present holdings in Central.

Actually, the question has become largely academic. On May 26, 1955, Alleghany received from New York Central complete reimbursement of the full amount of its proxy fight expenses (Exhibits 146-8, 168). Although this payment was subsequently attacked by minority stockholders of Central (Schildkret *v.* Young), that litigation was finally settled for $300,000 paid to the Central. Alleghany bore about one-half of that amount ($150,765), the individual directors bore the other half. The ultimate net cost of the proxy fight to Alleghany was thus $150,000. In view of Alleghany's large holdings of Central's stock and of the control actually achieved, I can find no impropriety in this expenditure.

The Option On 135,000 Shares.

Murchison Brothers, under date of December 13, 1954, granted Alleghany an option to buy 135,000 Central shares out of the 150,000 share interest of Murchison Brothers in their joint venture with Alleghany (Exhibits 159, 396). The first one-third of the option was exercisable at $25 per share; the second at $30 per share; and the third at $35 per share. Alleghany exercised the entire option on April 27, 1955, at which time the average market value of Central stock was 41-7/16 (Exhibits 160-161). Alleghany thus purchased 135,000 Central shares at a price about $1,544,000 below their current market value. The Complaint alleges that on the sale of these shares Murchison Brothers made a profit of $675,000, and it is claimed Alleghany is entitled to these profits.

It is clear that, standing alone, this transaction was of great benefit to Alleghany. It tends to negate the conspir-

acy charge and to demonstrate a sense of fairness rather than of conspiratorial activity on the part of the Murchisons. Whether or not Alleghany is entitled to any recovery from Murchison Brothers of the profits which accrued to them on their shares depends on the applicability of the corporate opportunity doctrine already discussed.

If the 135,000 shares which Murchison Brothers sold to Alleghany in December, 1954, were as of that date impressed with an equitable trust for Alleghany, and in consequence thereof were Alleghany's shares, it would follow that Murchison Brothers were not entitled to make any profit. On the other hand, if as I believe legal and equitable title to the shares was actually in Murchison Brothers, and the doctrine of corporate opportunity was not applicable, then it would appear that the sale of the shares was proper and that the option contract, pursuant to which they were sold, was not adverse to Alleghany's interest but was most advantageous to it.

The December, 1954 Sale of IDS Stock.

Alleghany, on December 13, 1954, the same date on which the option agreement above referred to was executed, entered into an agreement with Murchison Brothers to sell to it 55,000 voting shares of IDS at a price of $85.57 per share, for an aggregate price of $4,706,250. The price was substantially over market. Alleghany further agreed to exchange 130,000 IDS voting shares for 130,000 non-voting Class A shares of IDS, owned by Murchison Brothers (Exhibit 163).

Alleghany, on the same date, sold to Donald H. Carter, a business associate of the Murchisons, 45,000 voting shares of IDS, at $66.25 per share, for an agreed price of $2,981,250 (Exhibit 164). Carter acquired these shares for himself and had no obligations to the Murchisons with respect thereto (Exhibit 346).

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The stock to be sold to Murchison Brothers required S. E. C. approval, by reason of the fact that IDS was an investment company and the sale of the stock transferred to them statutory control.

The S. E. C. refused to approve the sale of the 55,000 IDS voting shares at $85.57 per share, on the ground that this price included a premium for control, which the S. E. C. felt was improper and in violation of law (Exhibits 264-267, 343).

Accordingly, Alleghany and Murchison Brothers dropped the proposed sale, which was at a price 13 points above the market, and consummated only the exchange of 130,000 voting for 130,000 non-voting shares (page 1446).

At the same time Alleghany exchanged an additional 82,000 voting shares of IDS for the same number of non-voting shares with several other persons not affiliated with Murchison Brothers (pages 304-305, 1446).

The Complaint alleges that the exchange between Murchison Brothers and Alleghany of 130,000 IDS voting shares for non-voting shares was improper because the voting shares surrendered by Alleghany were of greater value. It is further alleged that this transaction was motivated by a desire to reward Murchison Brothers for their help in connection with the Central proxy fight.

No evidence was adduced on the hearings to establish that this IDS transaction was a reward to the Murchisons. The proxy fight was concluded on May 26, 1954, and the IDS transaction was not discussed until November, 1954 (pages 1432-1434).

The net result of the transaction was that Murchison Brothers became the owner of about 39 per cent of the voting shares of IDS while Alleghany retained a very substantial investment of slightly less than 25 per cent (pages 1487-88).

The agreement between Murchison Brothers and Alleghany included an undertaking by Murchison Brothers to use their best efforts to elect two nominees of Alleghany

to the Board of IDS as long as Alleghany owned 100,000 shares of voting or non-voting stock (Exhibit 163). Moreover, Alleghany had the right of first refusal if Murchison Brothers desired to sell any of the 130,000 voting shares involved in the transaction (Exhibit 163; page 1447).

At the time of the transaction the market value of the voting and non-voting stock of IDS was approximately the same (Exhibits 124, 169). It would thus appear that if there was any detriment to Alleghany it must rest on the premise that the 130,000 voting shares of IDS constituted control of the company and should have been retained, or in the alternative, if sold, should have commanded a price higher than the market price paid for smaller units of stock.

Extensive testimony was adduced before me by defendants to support their contention that this transaction was in the best interest of Alleghany. The ownership of a control voting interest in an investment company imposed certain limitations that Alleghany desired to evade. Voting stock of an investment company is of limited use as collateral for bank loans, since there is always danger that more than 25 per cent of the total may come into the hands of a single bank or group of bankers, thereby automatically terminating the underwriting contracts and the profitable investment management contracts of the controlling corporation—in this case Alleghany.

Paramount above all, however, was the consideration that the time had come for Alleghany to devote virtually its entire efforts to the management of its Central investment, although retaining substantial interests in IDS.

Under the circumstances, defendants assert that Murchison Brothers were the only likely persons with whom to exchange the IDS stock. Their financial reputation and abilities were well known, assuring Alleghany that upon their acquisition of control of IDS, first class management would be maintained. Moreover, Alleghany was to have two directors on the IDS board when the Murchisons gained

control, and the right of first refusal on the voting shares when and if sold by the Murchisons.

In so far as complaint is made of the purchase by Carter of 45,000 shares of IDS voting stock from Alleghany, at a price less than the market, defendants assert that this sale came about only after Carter learned that the transaction for the sale of 55,000 voting shares between Alleghany and Murchison Brothers could not be consummated prior to December 31, 1954.

Carter knew that Alleghany desired to complete this sale prior to December 31, 1954, in order to take advantage of a tax loss carry-forward. He used that knowledge as a lever in obtaining a sale of the 45,000 voting shares at $66.25 per share. The market price in December had a high bid price of 74¼ and a low of 68, and a high asking price of 76½ and a low of 69 (Exhibit 124).

Young testified that there were no other securities in Alleghany's portfolio which would have yielded the profits necessary to offset the tax loss, and thus the transaction with Carter became imperative and to Alleghany's advantage (page 2954).

The principal objection to the exchange of 130,000 voting shares of IDS for 130,000 non-voting shares rests on the alleged failure of Alleghany to obtain a substantial financial consideration for the transfer. A legal question is involved whether any substantial financial considerations thus received would be in violation of the Investment Company Act.

A substantial part of the income of IDS was derived from certain contracts under which IDS acted as an investment advisor to three mutual funds, known as Investors Mutual, Inc., Investors Selective Fund, Inc. and Investors Stock Fund, Inc.

Section 15(a) (4) of the Investment Company Act provides that an investment advisory contract automatically terminates in the event of its assignment by the investment advisor.

Section 15(d) (1) of the Act makes it unlawful for any person to serve as an investment advisor of a registered investment company pursuant to a written contract after the assignment thereof by the investment advisor. The term "assignment," as defined in Section 2(a) (4) of the Act, includes the transfer of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Thus it is uncontroverted that the transfer of the controlling stock interest in IDS from Alleghany to Murchison would be deemed a transfer of the investment advisory contracts of IDS within the contemplation of the Investment Company Act.

The S. E. C., in objecting to so much of the proposed contract between Alleghany and Murchison Brothers, as called for the sale of 55,000 voting shares of IDS to Murchison Brothers, at $85.57 per share, a price substantially in excess of the then market value, referred to an opinion of its general counsel of May 11, 1942 (Investment Company Act, Release No. 354, CCA Fed. 2d L. Rep. Vol. 3, par. 47,836.10).

This opinion held that an investment advisor who directly or indirectly attempts to obtain a consideration for the purported transfer of his contract is guilty of gross misconduct and gross abuse of trust.

The S. E. C. maintained on the strength of the opinion of its general counsel of May 11, 1942, that Alleghany by selling its controlling stock interest in IDS at a premium would be trafficking in investment advisory contracts of IDS, contrary to the provisions of the Investment Company Act.

When the S. E. C. refused to approve the sale of the 55,000 voting shares to Murchison Brothers, the sale was dropped. The inference is clear that in the light of the S. E. C. reaction to this proposed sale, any attempt by Alleghany to obtain a financial consideration for the exchange of the voting and non-voting shares would have met with the same S. E. C. resistance as did its proposed sale of the 55,000 voting shares.

Objectants analyze the S. E. C. opinion of 1942, as based upon a transaction which involves the sale of a corporation having investment contracts as a sole asset, whereas only 10 per cent of IDS business involved investment contracts or fees resulting therefrom (Exhibits 297, 344). They therefore assert that even if the S. E. C. ruling of 1942 is applicable, it would merely result in Alleghany's having to turn over part of any premium which it received for its control of IDS, and that the part to be turned over would be as low as $30,000 (Exhibit 344, page 9).

Objectants assert that the refusal of the S. E. C. to approve the proposed sale of 55,000 voting shares was not because it would have constituted trafficking in investment advisory contracts, but rather that approval was denied because Alleghany refused to acquaint the S. E. C. with information concerning Alleghany's relationship with the Murchisons or to permit any inquiry by the S. E. C. which might have interfered with Alleghany's alleged plan to remain within the jurisdiction of the I. C. C. as a carrier rather than subject to the jurisdiction of the S. E. C. as an investment company.

It is alleged that when the S. E. C. manifested interest in the size and nature of IDS investment advisory fees and the relationship of those fees to IDS's total income, as well as the relationship of Donald H. Carter to Alleghany, and the part played by the Murchisons, Carter and Alleghany in the New York Central proxy fight (Exhibit 342), counsel for IDS and for Alleghany, the Murchisons and Senator Burton Wheeler, of Wheeler & Wheeler, special counsel for Alleghany, met with the representatives of the S. E. C., in Washington, D. C., and inquired whether these matters would have to be gone into in the event of a share for share exchange without additional financial considerations. When informed that no such inquiry would be necessary of a straight exchange transaction, it was decided to drop the proposed sale to Murchison Brothers

and to limit the agreement to an exchange of voting for non-voting stock.

Objectants finally argued that the opinion of general counsel for the SEC of May 11, 1942 was in error, as demonstrated by a recent decision of the United States Court of Appeals for the Ninth Circuit, Securities and Exchange Commission *v.* Insurance Securities, 254 F. 2d 642 (April 7, 1958); cert. denied U. S. Sup. Ct. No. 152 (October 12, 1958).

Upon careful consideration of the testimony and exhibits I conclude that the SEC would not have permitted Alleghany to exchange its 130,000 voting shares of IDS for more than 130,000 non-voting Class A shares of IDS. It appears to me immaterial whether or not Alleghany's management was unwilling, at the time, to make certain disclosures to the SEC and whether or not the conduct of Alleghany's management was affected by that unwillingness. This is so because the SEC was, at that time and for some time thereafter, committed to the position that control of an investment company with its investment advisory contracts must not be sold for a premium. This position of the SEC appears not only from the above mentioned opinion of its general counsel and from the evidence in this case, but also from the very authority invoked by the objectants, the Insurance Securities case (254 F. 2d 642). In the latter case the SEC stoutly maintained the same legal position as it did in its discussions with Alleghany. Having been overruled by the District Court (146 F. Supp. 778), the SEC prosecuted an appeal to the United States Court of Appeals whose decision was not rendered until April 7, 1958. Under these circumstances I am persuaded that the SEC took the same position in its discussions with Alleghany and that it would have adhered to this position if Alleghany had pressed for the exchange of its voting for a greater amount of non-voting IDS shares. The fact that the SEC's view of the law was finally overruled in 1958 has, of course, no bearing upon the conduct of Alleghany's management in dealing with the SEC in 1956.

Although the merits of plaintiffs' claims, insofar as they demand rescission of the IDS exchange transaction of 1955 are thus weak, the defendants have, since the close of the initial hearings herein, submitted revised offers of settlement which now include rescission of this transaction and the return to Alleghany of the 130,000 voting shares of IDS against the return by Alleghany to the Murchisons of the 130,000 Class A non-voting shares of IDS.

THE THIRD CAUSE OF ACTION.

The Investment Company Act Theory.

The Complaint alleges that after January 19, 1954, when Alleghany sold all of its remaining stock in C & O to Cyrus Eaton, Alleghany ceased to have carrier status and was thereafter required to be registered as an investment company under the 1940 Investment Company Act.

It is contended that the defendants knowingly refrained from registering Alleghany with the S. E. C. in furtherance of a conspiracy to enrich themselves at Alleghany's expense in the acquisition of control of the New York Central Railroad. Alleghany, it is contended, endeavored to create the appearance that it was a carrier, subject to regulation by the I. C. C. rather than by the S. E. C., and in furtherance of that plan sold off a great number of its non-railroad securities at a substantial loss.

In order to understand the nature of these charges it is necessary to consider briefly certain administrative and judicial rulings regarding Alleghany's status under the Investment Company Act of 1940 (15 U. S. C. par. 80-A-1 *et seq.*) and under the Interstate Commerce Act.

Alleghany, in 1940, upon the enactment of the Investment Company Act, registered with the Securities and Exchange Commission (SEC) as an investment company.

The Interstate Commerce Commission (I. C. C.) by order dated June 5, 1945, authorized Alleghany to acquire

control of the Chesapeake & Ohio Railway Company (C & O) and certain other railroads (Exhibit 102). The order provided, "unless and until otherwise ordered by this Commission, said Alleghany Corporation shall be considered as a carrier, subject to the provisions of Section 20 (1) to (10) inclusive, Section 20-A (2) to (11) inclusive of the Interstate Commerce Act."

It is provided by Section 3 (b) (9) of the Investment Company Act (15 U. S. C. 80-A-3 b-9), that any company subject to regulation under the Interstate Commerce Act is not to be deemed an investment company.

Following the I. C. C. order of June 5, 1945, which subjected Alleghany to the Interstate Commerce Act, the S. E. C. entered an order of October 4, 1945 (Exhibit 173) declaring that Alleghany had ceased to be an investment company within the meaning of the Investment Company Act, and ordering that Alleghany's registration under that Act was forthwith to cease to be in effect. The order further provided that if in the future Alleghany Corporation ceased to be subject to regulation under the Interstate Commerce Act," as set forth in such Findings and Opinion, this order may be revoked, suspended or modified after appropriate notice and opportunity for hearing".

Plaintiffs' cause of action runs as follows:

Alleghany sold all its stock in the C & O on January 19, 1954 and divested itself of control of that company. Alleghany then became automatically subject to the Investment Company Act. Since Alleghany failed to register with the S. E. C. pursuant to the Act, it became unlawful for Alleghany, by reason of Section 7(a) of the Act, to buy or sell securities through use of the mails or other means of interstate commerce, or to engage in any business in interstate commerce.

The Complaint then asserts that all of Alleghany's transactions since January 19, 1954 involved the use of the mails for interstate commerce, and that by reason thereof

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these transactions violated Section 7 of the Act and were void, pursuant to Section 47(b) of the Act.

Section 47(b) of the Investment Company Act, in so far as here applicable, provides "every contract made in violation of any provision of this Title and every contract heretofore or hereafter made, the performance of which involves the violation of * * * any provision of this Title * * * shall be void (1) as regards the rights of any person who, in violation of any such provision, * * * shall have made or engaged in the performance of any such contracts * * *."

Assuming that Alleghany became subject to investment company status on January 19, 1954, all of Alleghany's transactions with the Murchisons and Richardson since that date are void (with what effect on Alleghany remains to be discussed).

The Investment Company Act theory was first set forth in Schepis *vs.* Briggs, one of the eight actions originally consolidated in this Court, which general counsel was authorized to prosecute, and it was thereafter amplified and developed to include transactions that occurred subsequent to March 15, 1954, in the Breswick *vs.* Briggs Federal Court action.

General counsel for the plaintiffs expressed grave doubt as to the wisdom of the stockholders of Alleghany advancing such a theory. He feared that the sought for adjudication, if secured, would merely subject Alleghany to ruinous rescission actions.

Defendants assert that apart from the question of whether the application of the theory could be of any benefit to Alleghany, the evidence is clear that there are substantial defenses which would prevent the plaintiffs from recovering on this cause of action.

Objectants assert that these alleged defenses are not substantial and that general counsel has not given proper evaluation in this settlement to the Investment Company cause of action, and that his conclusion as to the effect of prosecuting this claim is unwarranted.

The applicability of the Investment Company Act t
transactions of Alleghany Corporation subsequent to
uary 19, 1954, was first judicially determined by the dec
of the three Judge statutory Court in connection wit
application for an interlocutory judgment (Breswick &
vs. U. S., 134 F. Supp. 132; Exhibit 179).

The Federal three Judge Court decision, dated Jul
1955, held that on January 19, 1954, Alleghany had
matically returned to investment company status.
same Court, in its final decision of November 18, 1955,
have receded somewhat from that decision by saying
Alleghany returned to investment company status "a
very latest on May 24, 1955," which was the date on
the I. C. C. rescinded its order of June 5, 1945, by wh
held that Alleghany was a carrier by virtue of its co
of C & O (Breswick & Co. *vs.* U. S., 138 F. Supp. 123
hibit 177).

Objectants leaned very heavily on these deci
throughout the hearings before me. They argued tha
three Judge Court decisions were dispositive of the
tion of illegality of the several transactions attacked
that they prove that general counsel for plaintiffs
really understood the issues whose settlement they
sponsoring; and that the exclusion from the settle
negotiations of Graubard's associate, Brussel, who ach
those victories, was improper.

After the close of the hearings, the three-Judge
decision was appealed to the Supreme Court of the U
States, which reversed and upheld the jurisdiction o
Interstate Commerce Commission with respect to the
plan submitted to it for approval [Alleghany Cor
Breswick & Co., 353 U. S. 151].

The Supreme Court, in its decision, remanded the
to the three Judge Court to determine whether the app
of the preferred stock issue by the I. C. C. complied
the provisions of the Interstate Commerce Act. Upon
remand, the three-Judge Court ruled on September 27,

[fol. 2355]

that, under section 5(4) of the Interstate Commerce Act, "Alleghany's unauthorized seizure of control of the Central and its subsidiaries was unlawful" and that the ICC had erred in approving the proposed exchange of Alleghany's preferred stocks. Breswick & Co. *v.* United States, 156 F. Supp. 227, 232, 237. This decision, however, was again reversed by the United States Supreme Court which remanded the case to the three-Judge Court for further proceedings. Alleghany Corporation *v.* Breswick & Co., 355 U. S. 415 (1958). Upon this second remand the three-Judge Court lifted the injunction and dismissed the Breswick action. Breswick & Co. *v.* United States, 160 F. Supp. 754 (1958).

It is necessary to take account of these decisions in considering whether Alleghany's transactions since January 19, 1954, violated the Investment Company Act or, perhaps, the Interstate Commerce Act (as indicated by the three-Judge Court in its later-reversed decision, 156 F. Supp. 227).

The legal picture is further complicated by a decision of the United States District Court for the Southern District of New York in still another case, Schwartz *v.* Bowman, 156 F. Supp. 361 (Oct. 18, 1957). In connection with a motion for summary judgment made by the defendants in that case, Judge Dimock held that, because of the plaintiff's uncontroverted allegation of a conspiracy to evade the Investment Company Act, he must find, for purposes of the motion for summary judgment, that, when Alleghany divested itself of its control of the C & O on January 19, 1954, it became forthwith subject to the Investment Company Act, despite the ICC's earlier order of June 5, 1945 which gave Alleghany a limited carrier status.

The Investment Company Act as well as the Interstate Commerce Act are Federal statutes. This Court, needless to say, is bound to give them full effect. It is equally clear, in my opinion, that the construction which the Federal Courts place on these Federal laws should be followed by

this Court. My desire to obtain such an authoritative interpretation of the Federal statutes was one of my reasons for postponing this report as long as I did. Unfortunately, the Federal Court proceedings have taken much more time than I could have foreseen. I feel the time has come for me to reach my own conclusions as best I can on the strength of the available authorities and in the light of the facts of this case.

While it would seem that the decisions of the United States Supreme Court in the Alleghany case tend to militate against the application of the Investment Company Act and the Interstate Commerce Act to the derivative causes of action here involved, I prefer not to base my analysis upon the interpretation of the Supreme Court's rulings. On the contrary, I shall assume, for purposes of my discussion, but without so holding, that either or both of these statutes must be here applied and render Alleghany's acquisition of control of the Central unlawful. Proceeding on this assumption, I shall first consider the impact of the Investment Company Act on these causes of action. It is necessary at the outset to consider the contention that general counsel for plaintiffs never properly understood or evaluated the Investment Company Act theory in negotiating the original settlement. On this aspect of the case, general counsel for plaintiffs was cross-examined and much has been written in the briefs of counsel. A synopsis of the argument will serve two purposes:

It explains general counsel's attitude, which has been sharply attacked as prejudicing the rights of Alleghany, and it offers an analysis of the impact of the Investment Company Act theory on the derivative causes of action presently under discussion.

General counsel's argument was to the effect that no possible benefits could come to Alleghany from a victory on the Investment Company Act theory, but that on the contrary Alleghany would suffer substantial losses and injury.

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The Investment Company Act does not spell out the consequences of a violation of 47(b) of the Act, and no authorities have been found dealing specifically with the invalidity of a contract violating Section 7(a) of the Investment Company Act.

General counsel claims that an answer to the problem must be resolved in accordance with the underlying purpose and policy of the statute. In the view of general counsel, the purpose of Section 7(a) of the Act is to completely immobilize an investment company in the absence of S. E. C. registration and to require that it refrain from any transactions whatsoever.

Assuming that view is correct, all transactions undertaken in violation of this section are "void" and must be undone and the company restored to the condition in which it would find itself if it had never undertaken the transactions. Under such an analysis of the statute, general counsel suggests that the Murchisons and Richardson must repay to Alleghany the $7,500,000 loaned to them by Alleghany, and also repay to Alleghany the $11,550,000 which Alleghany paid to them for 435,000 Central shares; namely, $7,500,000 for the first 300,000 shares and $4,050,000 for the additional 135,000 shares purchased pursuant to the December 13, 1954 option.

Alleghany, in turn, must return to the Murchisons and Richardson the 435,000 Central shares which it acquired from them. The market value of the Central shares at the time of the original hearings was about $45 per share, and the 435,000 shares had therefore a market value of $19,975,000.

In the light of general counsel's reasoning, Alleghany would have to surrender this asset against payment of only $11,550,000. The rescission of the Central transaction would thus result in a loss to Alleghany of $8,025,000.

I am satisfied that general counsel's fear that the Investment Company Act theory would be injurious to Alleghany, was a reasonable apprehension and that his evaluation of

this cause of action was a considered and persuasive one. The soundness of his judgment is not impaired by the recent drop in the market price of Central stock which he could not have foreseen.

The documents in evidence on this reference negate the contention of objectants that general counsel adopted his opinion as to the value of the Investment Company Act theory belatedly in the few days after the decision of the District Court and before the announcement of the settlement. Indeed, there is no question in my mind that before the Breswick action had been commenced, plaintiffs' general counsel attempted to discourage counsel for one Schepis from proceeding with that theory in the State Court action, which had been commenced long before the Breswick case was brought in the Federal Court.

Objectants, disputing the argument of general counsel, contend that the application of the Investment Company Act theory cannot hurt Alleghany but on the contrary is of substantial value to it. It is argued that since Murchison and Richardson are parties to a conspiracy to mulct Alleghany, a court of equity would deny their efforts to rescind and would indeed make them account for their profits.

There are several difficulties with this contention. First, it assumes as proved what is merely asserted, namely, that Murchison and Richardson are parties to a conspiracy. I have found no such proof in the voluminous records of these hearings.

Second, the theory advanced by objectants would reward Alleghany for its violation of the law by giving it the fruits of a transaction which the statute condemns as void. It would be a strained and indeed strange interpretation of the statute to reward Alleghany, which (by hypothesis) violated the law, while punishing innocent third parties (Murchison and Richardson), who have no fiduciary relationship to Alleghany, by denying them whatever profits they may have made. The duty to comply with the regis-

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tration requirements of the law falls on the offending company and not on third parties who contract with it. It would pervert both the letter and spirit of the law to have the consequences of illegality fall on innocent non-fiduciary third parties who had no obligation, when entering into deals with the company, to examine into its internal affairs to ascertain whether it was registered with one or another administrative agency.

Prescinding from the Supreme Court decision, it is my conviction that general counsel's fear as to the implications of the Investment Company Act theory in this derivative case had and has a sound basis in law.

Defendants urge that even if it be held that the Investment Company Act theory applies to the transactions here in question, they have good and meritorious defenses which would warrant a judicial determination that the directors of Alleghany be held free of culpability. They contend that the directors are not guarantors of the legality of all acts which their corporation undertakes, but that the true test of their liability is the criterion of due care.

The defendants assert that it was reasonable for Alleghany to believe that it was under the jurisdiction of the I. C. C. When Alleghany decontrolled C & O it was advised by its I. C. C. counsel, Senator Wheeler, that the sale of the C & O stock did not terminate the 1945 order of the I. C. C. (pages 3093-94).

Specific inquiry in this regard had been made of the I. C. C. by letter from Wheeler & Wheeler, on January 28, 1954, in reporting the divestment of C & O by Alleghany (Exhibit 398). The I. C. C. replied to said letter, on February 5, 1954, and called counsel's attention to the provision of the Commission's order of 1945, that Alleghany would be considered a carrier until further order of the I. C. C., and that no further order had been entered (Exhibit 399).

Nor do I think that defendants' belief in the continued effectiveness of the I. C. C. order of June 5, 1945 was arbi-

trary or frivolous. As a matter of fact, Division 4 of the I. C. C., in an opinion and order dated March 2, 1955, found that, without further order of the I. C. C., the voluntary action of Alleghany on and after January 19, 1954, in divesting itself of its security holdings in Chesapeake & Ohio, did not operate to alter the status of Alleghany as a carrier, subject to the I. C. C. (Exhibit 176, page 8). I should find it difficult to condemn defendants' reliance on the 1945 I. C. C. order as arbitrary when Division 4 of the I. C. C. reached the same legal conclusion.

I find further support for defendants' good faith in the fact that both the I. C. C. and the S. E. C. received prompt notification of the sale by Alleghany of its C & O stock holdings and nevertheless took no action. The I. C. C. was notified by Senator Wheeler's letter of January 28, 1954 (Exhibit 398) and by complaints of the Central; after investigation it took no steps (Exhibit 176, pp. 5-6). The S. E. C. was notified through the clearance of Alleghany's proxy statement; it likewise remained inactive (pp. 3615-7; Exhibit 125, p. 3). Defendants might well have felt that their duties under these Federal Statutes were no stricter than the standards applied by the Government agencies entrusted with their enforcement.

Defendants assert that their good faith reliance on outstanding administrative orders exempting Alleghany from regulation as an investment company protects them from any personal liability, even if it is to be assumed that Alleghany in fact violated the Act. Thus they point to Section 38(c) of the Investment Company Act of 1940 (15 U. S. C. A., Sec. 80 a-37(c)), which provides that no provision imposing liability under the Act shall apply to any act done or omitted in good faith, in conformity with any rule, regulation or order of the Commission, notwithstanding that such rule, regulation or order may, after such act or omission, be amended or rescinded or determined by judicial or other authorities to be invalid for any reason.

Objectants assert that these defenses of good faith and reliance upon the advice of counsel were considered and

rejected by Judge Walsh in his opinion in Breswick *vs.* Briggs, of September 28, 1955 (135 F. Supp. 397). The views of Judge Walsh, while entitled to serious consideration, were reached upon determination of a motion for summary judgment, in which he did not have an opportunity of hearing witnesses testify or the more comprehensive documentation offered during the hearing.

While it is true that the good faith defense of the defendants was largely predicated upon the wording of administrative orders, the development of that defense through the oral testimony of witnesses indicates to me that the defendants did indeed rely on qualified legal counsel and were sincere in their belief that Alleghany at all times was subject to the jurisdiction of the I. C. C., even though it had disposed of the C & O stock, and therefore was not subject to the provisions of the Investment Company Act.

The opinions of the Supreme Court, and even the dissenting opinion of Judge Douglas, would seem to make it clear that the issue is one on which reasonable men can disagree in good faith, as did the Justices of the Supreme Court. Even if, contrary to what appears to be the holding of the Supreme Court of the United States, it be assumed that Alleghany is and was subject to the Investment Company Act and therefore to the jurisdiction of the S. E. C., the entire record of these hearings establishes that the defendant directors exercised reasonable care in relying on the advice of counsel and the rulings of the Interstate Commerce Commission, and therefore they cannot be charged with liability.

I reach a similar conclusion with respect to the assumed violation of the Interstate Commerce Act. Here, again, I am presented with the question whether this violation of law, if it was such, subjects Alleghany's directors and officers to liability. It might well be asked, what liability? Did the assumed violation of the Interstate Commerce Act offend any rights designed for the protection of Alleghany or of its stockholders? Was Alleghany injured by the violation, and what were its damages?

I pass over these questions since here again—as in the case of the assumed violation of the Investment Company Act—there is no evidence that Alleghany's directors acted in bad faith or that their conduct was culpable or negligent. On the contrary, the record demonstrates the opposite.

The Interstate Commerce Act, like the Investment Company Act, is a highly technical statute. A layman cannot hope to master all the ramifications of these statutes. That takes a lawyer and, perhaps, a specialist in these fields. Alleghany's management was aware of that difficulty. They entrusted their I. C. C. problems to the Washington law firm of Wheeler and Wheeler whose senior partner, former United States Senator Wheeler, had been Chairman of the Senate Interstate Commerce Committee. Alleghany's management considered the firm as an outstanding authority in the field (p. 2380). In addition, Alleghany's management was being advised by Messrs. White and Case and Messrs. Lord, Day and Lord (p. 2386); and they had experienced house counsel in the person of Mr. Ireland and Mr. Glenn (p. 3876). Young testified that, throughout the transactions in question, he relied on the advice of counsel with respect to the status of Alleghany *vis-a-vis* the I. C. C. and the S. E. C. (pp. 2390, 3036). This testimony I find altogether credible. It would have been foolhardy for him to proceed otherwise. The very purpose of retaining so much legal talent was to obtain the benefit of their advice.

Senator Wheeler advised Young that Alleghany, despite the sale of the balance of its C & O stockholdings, remained under I. C. C. jurisdiction; and he advised Young not to file an application with the I. C. C. in that respect or with respect to the proposed acquisition of control of the Central (pp. 2384-6). Glenn who discussed the control problem under section 5(2) of the Interstate Commerce Act with the Wheeler firm (pp. 3702-3) was likewise of the opinion that Alleghany did not need I. C. C. approval for acquiring the control of Central (pp. 3715-7). Most significant, that was

[fol. 2363]

also the opinion of the I. C. C. itself, as expressed in its order of May 24, 1955 (Exhibit 177, pp. 9-11).

Under these circumstances, I see no basis for finding that Young and the other directors acted culpably or negligently in acquiring control of the Central without I. C. C. approval. In the absence of culpability there can be no liability. "Counsel's opinion as to the law (even though erroneous) should, in our opinion, protect the officers acting in reliance on it." Spirt *v.* Bechtel, 232 F. 2d 241, 247 (2d Cir., 1956).

THE FIFTH CAUSE OF ACTION.

The Exchange of Alleghany's Series A Preferred Stock for New 6 Per Cent Convertible Stock.

Alleghany, on January 14, 1955, called a special meeting of stockholders to approve a plan under which the 136,744 outstanding shares of Alleghany's Series A preferred stock would be exchanged for a new 6 per cent convertible preferred stock (Exhibit 81). Alleghany's stockholders approved the plan on February 8, 1955 (Exhibit 184).

The plan was submitted to the I. C. C. for approval, which was obtained by orders of that agency, dated May 26, 1955 and June 22, 1955 (Exhibits 188-189).

Breswick & Co., as already stated, obtained an order restraining Alleghany from further proceeding with the plan from a three-Judge Federal Court under date of July 21, 1955 (Exhibit 179).

The three-Judge Court, as we have seen, rendered two decisions permanently enjoining the plan, but both were reversed by the Supreme Court. After the second remand from the Supreme Court, the three-Judge Court dissolved the injunction, dismissed the Breswick action and held that the I. C. C.'s approval of Alleghany's preferred stock issue was in accordance with the provisions of the Interstate

Commerce Act (160 F. Supp. 754). The new 6% preferred stock was thereupon issued and the old Series A preferred stock was retired.

The Complaint in the case at bar charges that the preferred stock exchange violated the Investment Company Act in as much as it had not been submitted to the Securities Exchange Commission for approval. That argument is now refuted by the decision of the Supreme Court. Any contention that the stock issue was injurious to the common stockholders and should not have been approved by the I. C. C. has become equally baseless in view of the latest decision of the three-Judge Court.

Since the I. C. C. had jurisdiction, plaintiffs' complaint that Alleghany was occasioned large and unjustified expenses through the submission of the plan to the I. C. C. rather than the S. E. C. must necessarily fail.

In so far as plaintiffs allege the intrinsic unfairness of the plan to the stockholders and a violation by the individual defendants of their fiduciary duties to Alleghany, at resultant profit to themselves, it would seem that the defendants, having submitted the exchange to the proper administrative agency for approval and having received the same after a full hearing, were justified in proceeding with the exchange.

Accordingly, I conclude that the fifth cause of action has no prospect of success.

THE SIXTH CAUSE OF ACTION.

The Exchange by Young and Kirby of Alleghany Preferred Shares for Other Securities Owned by Alleghany.

It is alleged in the Complaint that Young and Kirby and their families purchased Alleghany Series A preferred stock in anticipation of exchange offers to be made by the corporation and later sold or exchanged the stock to the

corporation at a profit. This conduct is charged as a breach by Young and Kirby of their fiduciary duties to Alleghany.

Alleghany made five exchange offers of the character thus described. These offers were made on May 5, 1949 (Exhibit 190); September 17, 1949 (Exhibit 191); December 17, 1949 (Exhibit 192); October 24, 1952 (Exhibit 193); and February 8, 1955 (Exhibit 183).

Neither Young nor Kirby tendered any preferred stock to Alleghany under the first two offers of May and September, 1949. Young first participated in an exchange of Series A stock with Alleghany in December, 1949. His last purchase of Series A stock prior to this exchange was in February, 1947, nearly three years before the exchange (Exhibits 401, 403). Mrs. Young had bought no preferred shares prior to this exchange.

The next purchases of Series A stock by the Youngs were in 1940 and in 1951. No exchange offer was contemplated during that time and in fact Alleghany had ceased market purchases of its own Series A stock by July, 1950 (Exhibits 402, 403; pages 3383-84; 3388-89; 3373).

In so far as the October, 1952, exchange offer is concerned, Mr. and Mrs. Young's latest acquisitions predating that exchange offer were in April, 1952, approximately six months prior thereto. Mr. Young acquired 2500 shares and Mrs. Young 2900. These acquisitions were but a small fraction of the more than 28,000 shares they tendered to Alleghany under the exchange offer.

Young's latest substantial acquisitions prior to the exchange offer of February 8, 1955 were made in May, 1954 nine months before the exchange offer. Thereafter, in September and November of 1954, he bought only the small sum of 108 shares.

Mrs. Young's last substantial acquisitions prior to the exchange offer of February 8, 1955 were in December, 1953, some fourteen months before the exchange offer. Thereafter, in September and November, 1954, she purchased some 600 shares.

When it is considered that Mr. and Mrs. Young tendered a total of 14,825 shares to Alleghany, pursuant to the exchange offer of February 8, 1955, it is difficult to assert, on the basis of the record of their acquisitions as shown from Exhibit 402, that they purchased shares in anticipation of the exchange.

In so far as Kirby is concerned, the record establishes that substantially all of the preferred stock of Alleghany tendered by him and his holding companies under Alleghany's exchange offers, had been acquired in 1946, or long prior thereto. Since the holdings were in his hands more than three years prior to the first exchange offer in which he participated, the record does not support the contention that he purchased shares in anticipation of the exchange.

The defendants contend that it was in the best interests of Alleghany Corporation to acquire its Series A stock, and there is substantial support in the record for that statement. The stock had heavy dividend arrearages, and Alleghany, by either exchange or open market purchases, could settle claims of around $200 for a fraction of that amount.

Counsel, however, had advised Alleghany that any open market purchases exposed the corporation to a charge by prior preferred stockholders that a preference was being made in favor of Series A stock, since neither class of preferred stock was paying dividends.

Counsel further pointed out that the common stockholders might also object that purchases of any class of its stock by Alleghany constituted a liquidation of the company and was therefore adverse to the common stockholders (pages 3376-77).

Because of these objections, Alleghany had ceased open market purchases and decided upon the exchange transactions under attack in this cause of action.

The Series A Preferred stock of Alleghany was listed and traded on the New York Stock Exchange. There is no indication in the record that the amount of that stock avail-

able for purchase in the market would have been insufficient for Alleghany to buy such number of shares as it might have desired. The purchases by Mr. and Mrs. Young thus did not prevent Alleghany from making similar purchases had it been so inclined. Young had no personal motive to prevent Alleghany from making such purchases.

Based on a review of all the testimony, and the documentary material pertaining thereto, it is my opinion that the plaintiffs in the event of trial would have no reasonable prospect of success on this aspect of the sixth cause of action.

Objectant Kelly has asked that this aspect of the sixth cause of action be excluded from the settlement, in view of the fact that a case is now pending in the District Court of Rhode Island which allegedly attacks this preferred stock exchange in greater detail.

The purpose of a settlement is to effect a final disposition of all similar claims then pending. No cogent reason appears for excluding this cause of action from the settlement in the event of judicial approval of the compromise. Whether or not judicial approval of the compromise would constitute *res ajudicata,* the litigation in the Rhode Island District Court is a question not before me, but presumably that issue can be litigated in the forum in which the Kelly *vs.* Young action is pending should the settlement herein receive judicial approval.

The Edmonton Real Estate Deal.

The Complaint in the sixth cause of action further alleges that at various times since 1946, Alleghany had valuable opportunities of acquiring securities in corporations controlling certain shopping centers in Canada and elsewhere, and that such opportunities were diverted from Alleghany to Young and Kirby. The evidence established that Young had an interest to the extent of approximately

25 per cent in some real estate in Edmonton, Canada, in which a syndicate was formed in 1952 for the purpose of developing a shopping center. Young testified that Alleghany was not offered a participation in this so-called Edmonton deal because it was contrary to established Alleghany policy to acquire unpledgeable real estate (pages 2402-3).

The annual reports of Alleghany establish that it has not invested in real estate since 1945 (Exhibits 13-22).

Young further testified that he did offer an interest in the Edmonton syndicate to IDS, but that IDS was not interested (Exhibit 195, page 2402).

I am satisfied that this transaction was without the scope of Alleghany's activities in that it involved a foreign real estate investment with supervision of a great many petty details which Alleghany was not equipped to handle. Accordingly, there appears to be no basis for recovery by the plaintiffs on this transaction.

The Acquisition by Chesapeake Industrial, Inc. of Certain Companies.

The Complaint alleges that various corporate opportunities were diverted from Alleghany to Chesapeake Industries. During the period 1952 to 1954, Chesapeake Industries acquired the Virginia Metal Products Corporation, the Vanderwater Paper Company, Lathrop Paper Company, Cardwell Manufacturing Corporation, Grenby Manufacturing Company, the National Transitads, Inc., Colonial Trust Company, Intercoastal Petroleum Company, Home & Foreign Securities, International Holdings, Ltd., and Oil & Industries (pages 1276-92).

The evidence establishes that these companies were never offered to Alleghany and that Alleghany's management was not even aware that they had been offered to Chesapeake Industries until after the consummation of the sales to it.

Chesapeake Industries is substantially different in character from Alleghany. It is engaged in the business of owning the stocks of other companies and it owns substantially 100 per cent of the stock of all of its nine active subsidiaries. Chesapeake provides advisory functions for all of these companies through control of the various Boards of Directors, and participates in their policies, maintaining a legal department, an accounting department and a public relations department (pages 1275-6).

It is asserted by defendants that Alleghany would have no interest in any of the companies acquired by Chesapeake Industries by reason of the fact that the involved management problems of these companies were outside of the scope of Alleghany's business policies, and in some instances, for instance the Colonial Trust Company acquisition, were the type of investment which would probably have been illegal for Alleghany.

I am satisfied, on a review of all the evidence, that the defendants have established the dissimilarity of interest between Chesapeake Industries and Alleghany, and that there is little merit to the contention that the companies acquired by Chesapeake Industries were corporate opportunities of Alleghany.

THE SEVENTH CAUSE OF ACTION.

The Industrial Brownhoist Transaction.

Alleghany, in July, 1953, sold to Pennsylvania Coal & Coke Corporation 223,991 shares of Industrial Brownhoist Corporation, for an aggregate price of $2,900,382.58. The purchaser agreed to pay to Chesapeake Industries the sum of $111,995.50 as a commission, computed at the rate of 50 cents per share (Exhibit 201).

The Complaint alleges that Chesapeake Industries performed no services for Alleghany in the sale of the Brownhoist stock, and that the commission paid to it constituted in

fact part of the purchase price, which belonged to Alleghany rather than to Chesapeake.

The record establishes that it was Chesapeake which initiated the sale of the Brownhoist stock to Pennsylvania Coal & Coke Corporation (pages 2419-24; 1297-8; 1315-16; 1326-30).

Chesapeake obtained for Alleghany its asking price for the Industrial Brownhoist stock, which was in excess of the market of 10¼ per share (Exhibit 315, page 2422). Alleghany was so pleased with the sale thus initiated that Young advised McMillan, President of Chesapeake Industries, that Alleghany would pay the commission if the purchaser was unwilling to do so. However, the purchaser expressed a willingness to pay it, and so the commission had no effect on the purchase price.

It does not appear to me that there is any merit to this cause of action. Chesapeake Industries fully earned its commission, and there is no evidence that the selling price or the commission paid was unreasonable or that the commission in fact constituted part of the agreed purchase price.

THE EIGHTH CAUSE OF ACTION.

Sale of Portsmouth Steel Corporation Stock to Defendant Herman R. Neff.

Alleghany, on August 21, 1952, authorized the sale of 5,000 shares of the common stock of Portsmouth Steel Corporation, owned by Alleghany, to Herman R. Neff, one of Alleghany's directors, in exchange for his 4 per cent note for $67,500., payable by September 10, 1957 (Exhibit 202). Neff, on September 10, 1952, gave Alleghany his promissory note for $67,500, which provided that in the event of default by Neff, he might discharge his obligation in full by delivery of the 5,000 Portsmouth Steel shares pledged as collateral under the note. The note provided that there should be "no personal liability on the maker."

The Complaint alleges that the transaction constituted a gift, inasmuch as Neff undertook no personal liability but nevertheless was given title to the stock with the right to vote it, and to receive dividends thereon. Thus, it is claimed, Neff could keep the stock and make a capital gain in case of appreciation in market value over the price of $13.50 per share which he paid for it, and in the case of a decline in price, he would be under no obligation except to surrender the stock to Alleghany and to retain the dividends that he had received during the interim period.

Young testified that the consideration for this sale was an agreement by Neff to supervise Alleghany's substantial investment in Portsmouth Steel, consisting of more than 200,000 shares (Exhibit 20, page 14).

According to Young, Neff in fact has looked after the Portsmouth Steel investment, and has made quarterly interest payments on his note (pages 2424-26). Interest payments to Alleghany on Neff's notes aggregated $8,100 to September, 1955, while dividends on the shares he held, to August, 1955, have amounted to $13,250. Thus, dividends received by Neff until August, 1955, have exceeded his interest payments by approximately $5,000.

At the close of the hearings before me, the market price of Portsmouth Steel was 16¾ bid and 17½ asked, and thus exceeded the stipulated price of $13.50 by only 3½ points, or a total of $17,500 (page 4622).

Whether the loan granted by Alleghany to Neff in consideration for his future services was a wise corporate act on Alleghany's part would seem to be open to question. It would appear, however, to be a matter within the business judgment of the directors of Alleghany.

Objectants contend that Alleghany desired to reward a trusted and faithful servant who was retiring from their Board of Directors, and that the transaction was more in the nature of a gift than a *quid pro quo* for services rendered by Neff in keeping his eye on Alleghany's substantial investment in Portsmouth Steel.

It is true that the record does not indicate with any degree of particularity the services rendered by Mr. Neff in this connection, and whether such services were illusory or actually performed is a matter which would have to be more fully litigated before the trier of the facts in the event that the case went to plenary trial. Even if we assume, however, that the cause of action has merit, the amount of the recovery is small and may be considered as appropriately covered by the cash considerations to be given to Alleghany under the stipulation of settlement.

Counsel before the Referee.

Before setting forth my recommendations with respect to judicial approval of the proposed amended settlement in the light of the foregoing analysis of the various causes of action in the consolidated amended complaint, I deem it pertinent to commend counsel for both proponents and objectants to the proposed settlement, on the excellent presentation of their respective cases and the lucid, incisive examination of witnesses, both on direct and cross examination, which enabled me to compile for this Court a record replete in every detail, and which was of immeasurable aid in enabling me to reach the conclusion hereinafter set forth.

I desire to particularly call attention to the very able conduct of this litigation by Messrs. Graubard & Moskovitz, Seymour Graubard, Esq. and Philip Kazon, Esq. of counsel, who represented objectant Rosen. While counsel for all objectants were zealous in protecting the interests of Alleghany Corporation and deserve commendation for their efforts, it was the conduct of this case by counsel for objectant Rosen and the ancillary efforts of their associates, Messrs. Rosston, Hort & Brussel, by George J. Brussel of counsel, in the companion Federal Court litigation, that directly led to the proposed amendments to the original settlement agreement submitted to this Court for approval,

which increase the actual cash value of the proposed settlement to Alleghany Corporation by $300,000. Moreover, counsel for objectant Rosen and their associates in the companion Federal Court litigation have brought about as part of the amended settlement proposal an offer to rescind the 1955 IDS transaction by the return to Alleghany Corporation from the Murchison defendants of 130,000 voting shares of IDS for 130,000 non-voting shares previously exchanged by said defendants with Alleghany Corporation. The resultant value of the proposed rescission of the 1955 IDS transaction has been estimated at more than $1,750,000 by Mr. Graubard and at more than $5,000,000 by Mr. Brussel.

While not attempting to measure this value within definitive limits, I respectfully report that in the light of the recent decision of the U. S. Court of Appeals for the Ninth Circuit, *Securities & Exchange Commission* vs. *Insurance Securities*, 254 F. 2d, 642 (April 7, 1958), *Cert. denied* U. S. Supreme Court (Oct. 12, 1958), rescission of this transaction as part of the amended settlement agreement does have a very substantial value to which I have given due consideration in my recommendation to this Court, as hereinafter set forth.

Judicial Approval of the Settlement.

As previously stated, since the close of the hearings before me, settlement negotiations were held between the parties in the case of Breswick *vs.* Briggs, in the Federal Court, Southern District of New York, which is a derivative stockholders' action on substantially similar causes of action. These conferences resulted in increased offers of settlement which are of substantially more benefit to Alleghany Corporation than the proposed original settlement agreement submitted to this Court for judicial approval.

None of the increased offers was acceptable to plaintiffs' counsel in the Breswick action in the Federal Court. These

offers have been discussed in my report as Special Master, which is being submitted simultaneously herewith to the Federal Court.

The latest offer which defendants had made to the Breswick plaintiffs in their negotiations increased the earlier settlement proposal submitted to this Court in two respects: Defendants were willing to rescind the exchange by Alleghany of 130,000 common voting shares of IDS for 130,000 non-voting Class A shares of IDS; and defendants were willing to sell to Alleghany 225,000 Central shares at a discount of $300,000 below their market price against the issuance by Alleghany of shares of its Convertible Preferred stock.

With respect to the second branch of this offer objectants argue that it lends itself to an opportunity on the part of the defendants to increase their equity in Alleghany and recover sums in excess of the discount in the event that the value of Alleghany's stock should rise in the market. In order to meet this objection defendants, without withdrawing their previous offer, submitted an alternative offer: Rescission of the 130,000 share IDS transaction plus an additional cash payment of $300,000. Thus instead of selling 225,000 Central shares to Alleghany at a discount of $300,000, defendants would make an outright cash payment of $300,000 to Alleghany. (This $300,000 would be in addition to the $700,000 cash payment provided for in the original settlement agreement submitted to this Court.)

Before expressing my conclusion regarding the overall fairness of the proposed settlement I must turn to the question which of the two recently submitted alternative offers is preferable. In other words, is it preferable for Alleghany to receive an outright cash payment of $300,000, or to receive 225,000 Central shares at a discount of $300,000, the price therefor being payable in Alleghany's Convertible Preferred stock?

It is my considered opinion that the $300,000 cash payment is preferable. To approve the settlement in the other alternative form would place the stamp of judicial approval

upon a securities purchase by Alleghany. That is not, in my opinion, a proper function for the Court to perform. The market value of Central's stock has been subject to wide fluctuations. I am not prepared to say whether it is wise or unwise for Alleghany at this time to acquire a large block of Central stock. That is the responsibility of Alleghany's management. Moreover, the settlement would call on Alleghany to pay for the Central stock by issuing its own Convertible Preferred stock. The Court, I think, should not be asked to approve a change in Alleghany's capital structure. This, again, is a matter within the province of the management or, perhaps, the stockholders.

The purpose of the proposed stock sale at a discount of $300,000 is to give Alleghany a benefit of $300,000. That objective can be achieved more simply and more directly if defendants pay the sum of $300,000 to Alleghany. The corporation's management may then decide for itself whether and on what terms it wishes to buy shares of Central.

Objectants deny that an outright payment of $300,000 to Alleghany is as beneficial to Alleghany as the sale to it of 225,000 Central shares at a discount of $300,000. The principal basis of their contention is that the cash payment deprives Alleghany of the dividends on the 225,000 Central shares. But since the close of the hearings, the Central has discontinued its dividend payments so that this objection now is without force. If Alleghany nevertheless wishes to acquire a further block of Central stock it can do so by purchases in the market which, if prudently spaced, need not disturb the market price.

To summarize, the settlement whose fairness must be determined by this Court consists of the settlement originally submitted to this Court, as increased by the most recent augmented offer of defendants. By the terms of this amended settlement proposal, defendants are to pay the sum of $1,000,000 in cash to Alleghany; the 130,000 IDS share transaction is to be reversed; and the loss guarantee running from Murchison Brothers to Alleghany is to be amended so as to apply separately rather than in the aggre-

gate to each of the joint ventures between Murchison Brothers and Alleghany.

Apart from the payment of the sum of $1,000,000 in cash, it is not altogether easy to ascribe a precise valuation in dollars and cents to the other elements of the proposed settlement. It is significant, however, that counsel for objectant Rosen, on the hearings before me, evaluated the rescission of the 130,000 IDS share transaction at more than $5,000,000; counsel for the Breswick plaintiffs in the Federal Court action has conceded that such rescission is worth more than $1,750,000. I further find that the amendment of the loss guarantee running from Murchison Brothers to Alleghany has a value to Alleghany of at least $300,000.

I have considered the augmented offer of settlement in the light of the current probability of success or failure of the various causes of action alleged herein. So evaluated it appears to me that the amended offer of settlement constitutes a fair, reasonable and adequate basis for a settlement of this litigation and is worthy of judicial approval. In my considered judgment, it would be for the best interests of Alleghany and its stockholders to have this substantial settlement judicially approved so as to bring an end to this protracted litigation with its attendant expenses and its constant demands on the time of Alleghany's officers, who for many months have been prevented by this litigation from devoting all of their time and efforts to the business and affairs of the corporation.

Accordingly, I respectfully report and recommend that the original stipulation of settlement herein, as augmented by the latest subsequent offer of defendants, be accorded judicial approval.

Dated, New York, N. Y.
November 17, 1958.

Respectfully submitted,

ROBERT J. FITZSIMMONS
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APPENDIX

Appearances before:

ROBERT J. FITZSIMMONS,
Referee.

POMERANTZ, LEVY & HAUDEK, Esqs., General Counsel for Plaintiffs, 295 Madison Avenue, New York 17, N. Y., by ABRAHAM L. POMERANTZ, Esq., and WILLIAM E. HAUDEK, Esq., of Counsel;

AND

DANIEL W. BLUMENTHAL, Esq., Associated with the Attorneys for Plaintiff Freda Blumenthal, 475 Fifth Avenue, New York, N. Y.

GRAUBARD & MOSKOVITZ, Esqs., 115 Broadway, New York, N. Y.

AND

ROSSTON, HORT & BRUSSEL, Esqs., Attorneys for Samuel Rosen, a Stockholder, 141 Broadway, New York, N. Y., by SEYMOUR GRAUBARD, Esq. and PHILIP KAZON, Esq., of Counsel

ARTHUR W. LICHTENSTEIN, Esq., Attorney for Adelaide Neuwirth; also co-attorneys for Alexander Kahan, 295 Madison Avenue, New York, N. Y., by ARTHUR W. LICHTENSTEIN, Esq. and HARRY BIJUR, Esq., 10 East 40th Street, New York, N. Y. of Counsel.

AND

ALEXANDER KAHAN, Esq. of Counsel, 60 East 42nd Street, New York, N. Y.

EDWARD ENDELMAN, Esq., Attorney for Sadie B. Unger, Plaintiff in the Federal Consolidated Action, 225 Broadway, New York, N. Y.

GEIST & NETTER, Esqs., Attorneys for Carl M. Siroty, Plaintiff-Intervenor in the Federal Court Action,

276 Fifth Avenue, New York, N. Y., by KARL E. LEIBEL, Esq., and GEORGE E. NETTER, Esq. of Counsel.

SIDNEY L. GARWIN, Esq., Attorney for Plaintiff Henry Mencher, 225 Broadway, New York, N. Y.

ISRAEL BECKHARDT, Esq., Attorney for Jacob Haimowitz, Plaintiff in the Consolidated Action, 18 East 41st Street, New York, N. Y.

LEVISS & GORDON, Esqs., Attorneys for Plaintiff Bernard Lieberman, 22 East 42nd Street, New York, N. Y., by WILLIAM ROSENFELD, Esq., and ARTHUR GORDON, Esq., of Counsel.

MORRIS J. LEVY, Esq., Attorney for Charles Monheit, Plaintiff in the Federal Court Action, 261 Broadway, New York, N. Y.

DAVIS & QUAT, Esqs., Attorneys for Joseph Schildkret, Stockholder in New York Central Railroad Company, 259 Broadway, New York, N. Y., by LEON QUAT, Esq., of Counsel.

CHARLES TRYNIN, Esq., and IRVING STEINMAN, Esq., Attorneys for Plaintiff Frances Koenig, 50 Broadway, New York, N. Y.

ABRAHAM I. MARKOWITZ, Esq., Attorney for Millie Eisenberg, Plaintiff in the Federal Court Action, 2 Union Avenue, Amityville, N. Y.

NORMAN ANNENBERG, Esq., Attorney for Plaintiff Jeanette Annenberg, 29 Broadway, New York, N. Y.

TACHNA, PINKUSSOHN & BAUMAN, Esqs., Attorneys for I. Tachna & Co. Stockholder, 170 Broadway, New York, N. Y., by MAX TACHNA, Esq. and PAUL BAUMAN, Esq. of Counsel.

[fol. 2379]

NEMEROV & SHAPIRO, Esqs., 111 Broadway, New York, N. Y.

AND

TROTTA & SPORTA, Esqs., 25 Broad Street, New York, N. Y., Attorneys for Nicholas Schepis, Plaintiff in Consolidated Action, by LEONARD BRUNNER, Esq., of Counsel.

ABRAHAM M. GLICKMAN, Esq., Attorney for Plaintiff Abraham L. Fistel, 295 Madison Avenue, New York, N. Y., by ABRAHAM M. GLICKMAN, Esq. and SAMUEL H. LEVINKIND, Esq. of Counsel.

ZELBY & BURSTEIN, Esqs., Attorneys for Saul Tapper, 135 Broadway, New York, N. Y., by HERBERT BURSTEIN, Esq. and ARTHUR LIBERSTEIN, Esq. of Counsel.

DIGGINS, BOYCHUK & ENGEL, Esqs., Attorneys for Rupert T. Brown, a stockholder, 36 West 44th Street, New York, N. Y., by JOSEPH M. BOYCHUK, Esq. of Counsel.

PETER GEORGE MARTIN, Esq., Attorney for Defendant Alleghany Corporation, 25 Broadway, New York, 4, N. Y.

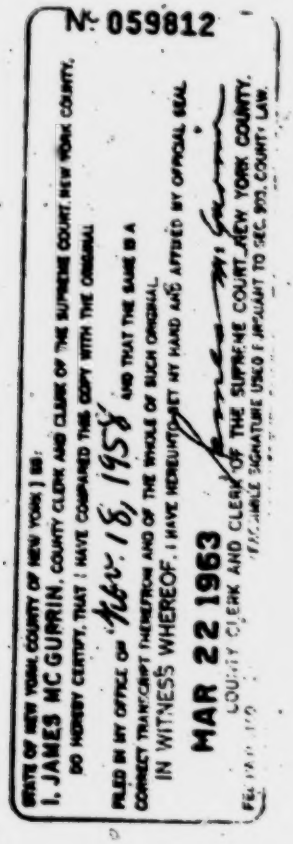
LORD, DAY & LORD, Esqs., Attorneys for Defendant Directors Thomas J. Deegan, Jr. and Robert R. Young and Defendant New York Central Company, 25 Broadway, New York, N. Y., by THOMAS F. DALY, Esq. and WOODSON D. SCOTT, Esq. FRANK H. MCFADDEN, Esq. of Counsel.

SATTERLEE, WARFIELD & STEPHENS, Esqs., 460 Park Avenue, New York, N. Y., WILLIAM E. STOCKHAUSEN and F. W. ADAMS, J. R. CROWLEY of Counsel.

Appearing for Clint W. Murchison, Sidney W. Richardson and Clint W. Murchison, Jr., individually and

as partners doing business under the firm name of Murchison Brothers, subject to the provisions of Paragraph 1, Page 3, of the Stipulation of Settlement.

BARTLETT, POE & GLAGGETT, Esqs., Attorneys for Stockholder Nellie B. Kelly, U. S. Fidelity & Guaranty Bldg., Baltimore, Md., by EDGAR ALLEN POE of Counsel.



[fol. 2381]

IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT NO. K-138

SADIE ZENN et al., Plaintiffs, *v.* J. J. ANZALONE et al., Defendants.

Supreme Court, Special Term, New York County, March 9, 1959.

Corporations — stockholders' derivative action — compromise — application for approval of proposed compromise of consolidated stockholders' derivative action, brought on behalf of Alleghany Corporation, granted.

1. An application to confirm the report of a Referee and for approval of a proposed compromise of a consolidated stockholders' derivative action, brought on behalf of Alleghany Corporation, is granted.

2. There is outstanding in an action entitled Breswick & Co., et al., against O. Henry Briggs et al., in a Federal court, an order enjoining defendants from pleading as *res judicata* any judgment obtained herein as a result of any settlement not negotiated with counsel for the Breswick plaintiffs, who now constitute the principal objectants herein. In the event the Federal court fails to vacate the injunction the parties may make further application in this court for such further action or relief as they may deem appropriate.

Pomerantz, Levy & Haudek (*Abraham L. Pomerantz* and *William E. Haudek* of counsel), for plaintiffs.

Daniel W. Blumenthal for Freda Blumenthal, plaintiff.

Graubard & Moskovitz and *Rosston, Hart & Brussel* (*Seymour Graubard* and *Philip Kazon* of counsel), for Samuel Rosen.

Arthur W. Lichtenstein, Harry Bijur and *Alexander Kahan* for Adelaide Neuwirth and another.

Edward Endelman for Sadie B. Unger, plaintiff.

Geist & Netter (*Karl E. Liebel* and *George E. Netter* of counsel), for Carl M. Siroty, plaintiff-intervenor.

Sidney L. Garwin for Henry Mencher, plaintiff.

Israel Beckhardt for Jacob Haimowitz, plaintiff.

Leviss & Gordon (*William Rosenfeld* and *Arthur Gordon* of counsel), for Bernard Lieberman, plaintiff.

Morris J. Levy for Charles Monheit, plaintiff.

Davis & Quat (*Leon Quat* of counsel), for Joseph Schildkret.

Charles Trynin and *Irving Steinman* for Frances Koenig, plaintiff.

Abraham I. Markowitz for Millie Eisenberg, plaintiff.

Norman Annenberg for Jeanette Annenberg, plaintiff.

Tachna, Pinkussohn & Bauman (*Max Tachna* and *Paul Bauman* of counsel), for I. Tachna & Co.

Nemerov & Shapiro and *Trotta & Sporta* (*Leonard Brunner* of counsel), for Nicholas Schepis, plaintiff.

Abraham M. Glickman and *Samuel H. Levinkind* for Abraham L. Fistel, plaintiff.

Zelby & Burstein (*Herbert Burstein* and *Arthur Liberstein* of counsel), for Saul Tapper.

Diggins, Boychuk & Engel (*Joseph M. Boychuk* of counsel), for Rupert T. Brown.

Peter George Martin for Alleghany Corporation, defendant.

Lord, Day & Lord (*Thomas F. Daly, Woodson D. Scott* and *Frank H. McFadden* of counsel), for Thomas J. Deegan, Jr., and others, defendants.

Satterlee, Warfield & Stephens (*William E. Stockhausen, F. W. Adams* and *J. R. Crowley* of counsel), for Clint W. Murchison and others.

Bartlett, Poe & Glaggett (*Edgar Allen Poe* of counsel), for Nellie B. Kelly.

Owen McGivern, J. This is an application to confirm the report of a Referee and for approval of a proposed compromise of a consolidated stockholders' derivative action, brought on behalf of Alleghany Corporation. The settlement, the fairness of which is before this court, consists of certain original terms, later increased by an augmented offer of the defendants. By the terms of this amended settlement proposal, the defendants are to pay as follows: the sum of $1,000,000 in cash to Alleghany; rescind the exchange by Alleghany of 130,000 common voting shares of Investors Diversified, Inc. stock for 130,000 nonvoting Class A shares of Investors Diversified, Inc. stock; and amend a loss guarantee agreement running from the Murchison Brothers to Alleghany so as to apply separately rather than in the aggregate to each of certain joint ventures between Murchison Brothers and Alleghany.

In reaching a determination as to whether or not the proposed agreement of settlement is worthy of judicial approval, this court must weigh the benefits held forth by the agreement of settlement against benefits dependent on the likelihood of recovery upon the plaintiffs' cause of action (*Shielcrawt* v. *Moffett*, 59 N. Y. S. 2d 619, 621) keeping in mind that agreements of compromise are generally favored by the courts (*Weil* v. *Weil*, 227 App. Div. 378, 385 [1st Dept.]) in order to avoid the determination of sharply contested and dubious issues (*Matter of Prudence Co.*, 98 F. 2d 559, 560, cert. denied *sub nom. Stein* v. *McGrath*, 306 U. S. 636). Every proposed settlement in this type of litigation constitutes a compromise

[fol. 2383]

which each of the parties expects to make some surrender, in order to prevent costly and protracted litigation. And in determining the plaintiffs' chance of success upon the issues presented and a correlative conclusion drawn as to the fairness and reasonableness of the proposed compromise, it is not incumbent upon this court "to balance the scales with the nicety of an apothecary" (*Shielcrawt* v. *Moffett, supra,* p. 621).

However, this court is the beneficiary of a lucid, painstaking and comprehensive report of a Referee achieved after protracted hearings which more nearly resembled a trial on the merits than on the adequacy of the proposed settlement. These hearings conducted over a period of 35 days, wherein seven witnesses for the proponents of the settlement and 11 for the objectants were heard, are reflected in some 4,600 pages of testimony and some 480 exhibits.

The Referee has concluded, that viewed in the light of the current probability of success or failure of the various causes of action alleged in the consolidated complaint, the amended offer of settlement constitutes a fair, reasonable and adequate basis for a settlement of this litigation, and is worthy of judicial approval, and that it would be for the best interests of Alleghany and its stockholders to have this settlement judicially approved, so as to bring an end to this protracted litigation with its attendant expenses and constant demands upon the time of Alleghany's officers.

As against the background of several other actions pending in the United States District Court for the Southern District of New York, and in the District Court of Rhode Island based upon substantially similar claims, counsel for the Rhode Island complainant has requested that the cause of action in Rhode Island be excluded from the proposed settlement made herein, in the event of judicial approval of the compromise. But since the purpose of a settlement is to effect a final disposition of all similar claims then pending, no cogent reason appears for excluding this cause of action from the settlement in the event of judicial approval of the compromise. Whether or not judicial approval of the compromise would constitute *res judicata* as to the litigation in the Rhode Island District Court, is a question not presently at issue and presumably that issue can be litigated in the forum in which the Kelly v. Young Rhode Island action, or any other action, is pending, following any judicial approval of the proposed settlement herein.

In sum, after consideration of all of the factors in this case, this court is of the opinion that the original stipulation of settlement herein, as now augmented by the latest subsequent

offer of defendants, is fair and reasonable, was negotiated at arms' length, is free from fraud or collusion and is in the best interests of the Alleghany Corporation and its stockholders. Accordingly, approval is accorded the proposed compromise; and the Referee's report is confirmed and adopted as the decision of this court.

There is, however, as a practical matter, outstanding in the action of *Breswick & Co.* v. *Briggs* in the United States District Court for the Southern District of New York a Federal court order dated October 27, 1955, enjoining the defendants from pleading as *res judicata* any judgment obtained here as a result of any settlement not negotiated with counsel for the Breswick plaintiffs, who now constitute the principal objectants to the confirmation of the report of the Referee. And the same Referee herein was appointed Special Master to hear and report as to whether or not said injunction should be vacated or modified. The Special Master has recommended its vacatur.

If the Federal injunction remains in effect, there will be an impediment to the conclusion of any proposed settlement which may be judicially approved herein, more particularly with respect to the general release required to be given by Alleghany under the terms of the written stipulation of settlement dated July 25, 1955, now augmented. Wherefore, this court at this time merely passes upon the propriety of the proposed settlement and approves the same. Until, however, an order has been entered in the Federal court vacating the injunction, no order upon this instant decision of this court may be entered. Upon proof by affidavit of the happening of such event, an order based upon the decision herein made may then be settled on notice.

In the event the Federal court rejects the Master's recommendation and fails to vacate such injunction, the parties may make further application in this court for such further action or relief as they may deem appropriate.

[fol. 2385]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-155A

Release by Alleghany Corporation to J. J. Anzalone

KNOW ALL MEN BY THESE PRESENTS that Alleghany Corporation, a corporation organized and existing under the laws of the State of Maryland (hereinafter called "Alleghany"), in consideration of One Dollar ($1.00) and other good and valuable consideration, receipt whereof is hereby acknowledged,

Pursuant to authority conferred upon it by the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954) and pursuant to a vote of its Board of Directors, does hereby remise, release and discharge J. J. Anzalone of and from all claims, demands and causes of action of whatever kind or nature, whether at law or in equity, which against him have arisen, or now exist or may hereafter arise by reason of any of the matters and things alleged, referred to or embraced in the consolidated amended complaint heretofore served in an action entitled "Sadie Zenn, et al., Plaintiffs, against J. J. Anzalone, et al., Defendants," (hereinafter referred to as "the Zenn action"), brought in the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954), or in the amended complaint served in an action entitled "Breswick & Co., et al. v. Briggs, et al." brought in the United States District Court for the Southern District of New York (Civil Action No. 98-371), or arising in any way out of the facts or transactions therein referred to, provided, however, that nothing herein contained shall operate as a

release of any obligation which J. J. Anzalone has under the provisions of the settlement of the Zenn action approved by the Supreme Court of the State of New York, County of New York (Owen McGivern, J.), by opinion dated March 12, 1959, in the Zenn action.

By these presents Alleghany Corporation does not remise, release and discharge any person other than J. J. Anzalone from any of the foregoing and reserves all rights and claims against all persons other than J. J. Anzalone.

In the event judgment is recovered in ~~any~~ action or proceeding upon any cause of action or claim alleged in either of the aforesaid actions as to which J. J. Anzalone is jointly liable with one or more other defendants, the amount of the judgment on said cause of action or claim shall be reduced by the proportionate share thereof which J. J. Anzalone would have been required to pay had he not been released hereby and had all other defendants jointly liable for the judgment on said cause of action or claim paid their respective proportionate shares of such judgment in full.

In Witness Whereof, Alleghany Corporation has caused these presents to be executed in its name and behalf and its corporate seal to be hereunto affixed by Charles T. Ireland, Jr. its Executive Vice Pres. hereunto duly authorized, this 18th day of February 1960.

Alleghany Corporation

By: Charles T. Ireland, Jr.
(Seal)

Witness:

Thomas F. Daly

2386

[fol. 2387]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-155G

RELEASE BY ALLEGHANY CORPORATION TO ALLAN P. KIRBY

KNOW ALL MEN BY THESE PRESENTS that Alleghany Corporation, a corporation organized and existing under the laws of the State of Maryland (hereinafter called "Alleghany"), in consideration of One Dollar ($1.00) and other good and valuable consideration, receipt whereof is hereby acknowledged,

Pursuant to authority conferred upon it by order of the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954) and pursuant to a vote of its Board of Directors, does hereby remise, release and discharge Allan P. Kirby of and from all claims, demands and causes of action of whatever kind or nature, whether at law or in equity, which against him have arisen, or now exist or may hereafter arise by reason of any of the matters and things alleged, referred to or embraced in the consolidated amended complaint heretofore served in an action entitled "Sadie Zenn, et al., Plaintiffs, against J.J. Anzalone, et al., Defendants," brought in the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954), or in the amended complaint served in an action entitled "Breswick & Co., et al. v. Briggs, et al." brought in the United States District Court for the Southern District of New York (Civil Action No. 98-371), or arising in any way out of the facts or transactions therein referred to, provided, however, that nothing herein contained shall operate as a release of any obligations which Allan P. Kirby has or which may arise as a consequence of the provisions of paragraphs 2, 2a or 2b of the Supplemental Stipulation of Settlement dated December 24, 1959, in the aforesaid Zenn action.

[fol. 2388] By these presents Alleghany Corporation does not remise, release and discharge any person other than Allan P. Kirby from any of the foregoing and reserves all rights and claims against all persons other than Allan P. Kirby.

In the event judgment is recovered in any action or proceeding upon any cause of action or claim alleged in either of the aforesaid actions as to which Allan P. Kirby is jointly liable with one or more other defendants, the amount of the judgment on said cause of action or claim shall be reduced by the proportionate share thereof which Allan P. Kirby would have been required to pay had he not been released hereby and had all other defendants jointly liable for the judgment on said cause of action or claim paid their respective proportionate shares of such judgment in full.

IN WITNESS WHEREOF, Alleghany Corporation has caused these presents to be executed in its name and behalf and its corporate seal to be hereunto affixed by Charles T. Ireland Jr its Executive Vice President thereunto duly authorized, this 29th day of December 1959.

ALLEGHANY CORPORATION

By: /s/ CHARLES T. IRELAND, JR.

[fol. 2389]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-155H

RELEASE BY ALLEGHANY CORPORATION TO CLINT W. MURCHISON, JR. AND JOHN D. MURCHISON, INDIVIDUALLY AND DOING BUSINESS AS MURCHISON BROTHERS, AND CLINT W. MURCHISON, SR.

KNOW ALL MEN BY THESE PRESENTS that Alleghany Corporation, a corporation organized and existing under the

laws of the State of Maryland (hereinafter called "Alleghany"), in consideration of One Dollar ($1.00) and other good and valuable consideration, receipt whereof is hereby acknowledged,

Pursuant to authority conferred upon it by the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954) and pursuant to a vote of its Board of Directors, does hereby remise, release and discharge Clint W. Murchison, Jr. and John D. Murchison individually and doing business as Murchison Brothers and Clint W. Murchison, Sr. (hereinafter collectively referred to as the Murchison defendants), of and from all claims, demands and causes of action of whatever kind or nature, whether at law or in equity, which against them have arisen, or now exist or may hereafter arise by reason of any of the matters and things alleged, referred to or embraced in the consolidated amended complaint heretofore served in an action entitled "Sadie Zenn, et al., Plaintiffs against J. J. Anzalone, et al., Defendants," brought in the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954), or in the amended complaint served in an action entitled "Breswick & Co., et al. v. Briggs, et al." brought in the United States District Court for the Southern District of New York (Civil Action No. 98-371), or arising in any way out of the facts or transactions therein referred to, provided, however, that nothing herein contained shall operate as a release of any obligation which said Murchison Brothers or any of them have with respect to the voting [fol. 2390] shares of Investors Diversified Services, Inc. as provided by order of the Supreme Court of the State of New York, County of New York, dated December 29, 1959 and under the provisions of the settlement of the Zenn action approved by the Supreme Court of the State of New York, County of New York (Owen McGivern, J.) by opinion dated March 12, 1959 in the Zenn action.

By these presents Alleghany Corporation does not remise, release and discharge any persons other than the Murchison

defendants from any of the foregoing and reserves all rights and claims against all persons other than the Murchison defendants.

In the event judgment is recovered in any action or proceeding upon any cause of action or claim alleged in either of the aforesaid actions as to which the Murchison defendants are jointly liable with one or more other defendants, the amount of the judgment on said cause of action or claim shall be reduced by the proportionate share thereof which the Murchison defendants would have been required to pay had they not been released hereby and had all other defendants jointly liable for the judgment on said cause of action or claim paid their respective proportionate shares of such judgment in full.

IN WITNESS WHEREOF, Alleghany Corporation has caused these presents to be executed in its name and behalf and its corporate seal to be hereunto affixed by Charles T. Ireland, Jr., its Executive Vice-President hereunto duly authorized, this day of March, 1960.

ALLEGHANY CORPORATION

By: .....

[fol. 2391]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-155K

RELEASE BY ALLEGHANY CORPORATION TO R. W. PURCELL

KNOW ALL MEN BY THESE PRESENTS that Alleghany Corporation, a corporation organized and existing under the laws of the State of Maryland (hereinafter called "Alleghany"), in consideration of One Dollar ($1.00) and other good and valuable consideration, receipt whereof is hereby acknowledged,

Pursuant to authority conferred upon it by the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954) and pursuant to a vote of its Board of Directors, does hereby remise, release and discharge R. W. Purcell of and from all claims, demands and causes of action of whatever kind or nature, whether at law or in equity, which against him have arisen, or now exist or may hereafter arise by reason of any of the matters and things alleged, referred to or embraced in the consolidated amended complaint heretofore served in an action entitled "Sadie Zenn, et al., Plaintiffs, against J. J. Anzalone, et al., Defendants," (hereinafter referred to as "the Zenn action"), brought in the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954), or in the amended complaint served in an action entitled "Breswick & Co., et al. v. Briggs, et al." brought in the United States District Court for the Southern District of New York (Civil Action No. 98-371), or arising in any way out of the facts or transactions therein referred to, provided, however, that nothing herein contained shall operate as a release of any obligation which R. W. Purcell has under the provisions of the set-
[fol. 2392] tlement of the Zenn action approved by the Supreme Court of the State of New York, County of New York (Owen McGivern, J.), by opinion dated March 12, 1959, in the Zenn action.

By these presents Alleghany Corporation does not remise, release and discharge any person other than R. W. Purcell from any of the foregoing and reserves all rights and claims against all persons other than R. W. Purcell.

In the event judgment is recovered in any action or proceeding upon any cause of action or claim alleged in either of the aforesaid actions as to which R. W. Purcell is jointly liable with one or more other defendants, the amount of the judgment on said cause of action or claim shall be reduced by the proportionate share thereof which R. W. Purcell would have been required to pay had he not been released hereby and had all other defendants

jointly liable for the judgment on said cause of action or claim paid their respective proportionate shares of such judgment in full.

IN WITNESS WHEREOF, Alleghany Corporation has caused these presents to be executed in its name and behalf and its corporate seal to be hereunto affixed by Charles T. Ireland, Jr. its Executive Vice Pres. hereunto duly authorized, this 18th day of February 1960.

ALLEGHANY CORPORATION

By: /s/ CHARLES T. IRELAND, JR.
(SEAL)

WITNESS:

Thomas F. Daly

[fol. 2393]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT No. K-155Q

RELEASE BY ALLEGHANY CORPORATION TO ANITA O'KEEFFE YOUNG AS EXECUTRIX OF THE ESTATE OF ROBERT R. YOUNG, DECEASED

KNOW ALL MEN BY THESE PRESENTS that Alleghany Corporation, a corporation organized and existing under the laws of the State of Maryland (hereinafter called "Alleghany"), in consideration of One Dollar ($1.00) and other good and valuable consideration, receipt whereof is hereby acknowledged,

Pursuant to authority conferred upon it by the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954) and pursuant to a vote of its Board of Directors, does hereby remise, release and discharge Anita O'Keeffe Young, as Executrix of the Estate of Robert R. Young, deceased, of and from all claims, demands and causes of action of whatever kind or nature, whether at law or in equity, which against her have arisen,

or now exist or may hereafter arise by reason of any of the matters and things alleged, referred to or embraced in the consolidated amended complaint heretofore served in an action entitled "Sadie Zenn, et al., Plaintiffs, against J. J. Anzalone, et al., Defendants," (hereinafter referred to as "the Zenn action"), brought in the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954), or in the amended complaint served in an action entitled "Breswick & Co., et al. v. Briggs, et al." brought in the United States District Court for the Southern District of New York (Civil Action No. 98-371), or arising in any way out of the facts or transactions therein referred to, provided, however, that nothing herein contained shall operate as a release of any obligations which Anita O'Keeffe Young as Executrix of the [fol. 2394] Estate of Robert R. Young, deceased, has under the provisions of the settlement of the Zenn action approved by the Supreme Court of the State of New York, County of New York (Owen McGivern, J.), by opinion dated March 12, 1959, in the Zenn action.

By these presents Alleghany Corporation does not remise, release and discharge any person other than Anita O'Keeffe Young as Executrix of the Estate of Robert R. Young, deceased, from any of the foregoing and reserves all rights and claims against all persons other than Anita O'Keeffe Young as Executrix of the Estate of Robert R. Young, deceased.

In the event judgment is recovered in any action or proceeding upon any cause of action or claim alleged in either of the aforesaid actions as to which Anita O'Keeffe Young as Executrix of the Estate of Robert R. Young, deceased, is jointly liable with one or more other defendants, the amount of the judgment on said cause of action or claim shall be reduced by the proportionate share thereof which Anita O'Keeffe Young as Executrix of the Estate of Robert R. Young, deceased, would have been required to pay had she not been released hereby and had all other defendants jointly liable for the judgment on said cause of

action or claim paid their respective proportionate shares of such judgment in full.

IN WITNESS WHEREOF, Alleghany Corporation has caused these presents to be executed in its name and behalf and its corporate seal to be hereunto affixed by Charles T. Ireland, Jr. its Executive Vice Pres. hereunto duly authorized, this 18th day of February 1960.

ALLEGHANY CORPORATION

By: /s/ CHARLES T. IRELAND, JR.

WITNESS:
/s/ THOMAS F. DALY

[fol. 2395]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT No. K-156A

RELEASE BY ALLEGHANY CORPORATION TO J. J. ANZALONE

KNOW ALL MEN BY THESE PRESENTS that Alleghany Corporation, a corporation organized and existing under the laws of the State of Maryland (hereinafter called "Alleghany"),

In consideration of One Dollar ($1) and other good and valuable consideration, receipt whereof is hereby acknowledged,

Pursuant to authority conferred upon it by judgment of the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954) and pursuant to a vote of its Board of Directors,

Does hereby remise, release and discharge J. J. Anzalone of and from all claims, demands and causes of action of whatever kind or nature, whether at law or in equity, which against him have arisen, or now exist or may hereafter arise by reason of any of the matters and things alleged, referred to or embraced in the consolidated amended complaint heretofore served in an action entitled "Sadie Zenn,

et al., Plaintiffs, against J. J. Anzalone, et al., Defendants", brought in the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954), or arising in any way out of the facts or transactions therein referred to.

IN WITNESS WHEREOF, Alleghany Corporation has caused these presents to be executed in its name and behalf and its corporate seal to be hereunto affixed by Charles T. Ireland, Jr., its Executive Vice-President hereunto duly authorized, this 13th day of May, 1960.

ALLEGHANY CORPORATION

By: .....

[fol. 2395a]
STATE OF NEW YORK,
COUNTY OF NEW YORK, SS.

On the 13th day of May, 1960, before me came Charles T. Ireland, Jr. to me known, who, being by me duly sworn, did depose and say that he resides at 11 Orchard Road, Briarcliff Manor, New York; that he is the Executive Vice President of Alleghany Corporation, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

.....

[fol. 2396]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT No. K-156G

RELEASE BY ALLEGHANY CORPORATION TO ALLAN P. KIRBY

KNOW ALL MEN BY THESE PRESENTS that Alleghany Corporation, a corporation organized and existing under the laws of the State of Maryland (hereinafter called "Alleghany"),

In consideration of One Dollar ($1) and other good and valuable consideration, receipt whereof is hereby acknowledged,

Pursuant to authority conferred upon it by judgment of the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954) and pursuant to a vote of its Board of Directors,

Does hereby remise, release and discharge Allan P. Kirby of and from all claims, demands and causes of action of whatever kind or nature, whether at law or in equity, which against him have arisen, or now exist or may hereafter arise by reason of any of the matters and things alleged, referred to or embraced in the consolidated amended complaint heretofore served in an action entitled "Sadie Zenn, et al., Plaintiffs, against J. J. Anzalone, et al., Defendants", brought in the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954), or arising in any way out of the facts or transactions therein referred to.

IN WITNESS WHEREOF, Alleghany Corporation has caused these presents to be executed in its name and behalf and its corporate seal to be hereunto affixed by Charles T. Ireland, Jr., its Executive Vice-President hereunto duly authorized, this 13th day of May, 1960.

ALLEGHANY CORPORATION

By: /s/ CHARLES T. IRELAND, JR.

[fol. 2397]
STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.

On the 13th day of May, 1960, before me came Charles T. Ireland, Jr. to me known, who, being by me duly sworn, did depose and say that he resides at 11 Orchard Road, Briarcliff Manor, New York; that he is the Executive Vice President of Alleghany Corporation, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

/s/ THOMAS H. GOLDER

Thomas H. Golder
Notary Public, State of New York
No. 60-6567425
Qualified in Westchester County.
Certificate filed in New York County
Commission expires Mar. 30, 1962

[fol. 2398]
IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT No. K-156H

RELEASE BY ALLEGHANY CORPORATION TO CLINT W. MURCHISON, JR. AND JOHN D. MURCHISON, INDIVIDUALLY AND AS PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF MURCHISON BROTHERS.

KNOW ALL MEN BY THESE PRESENTS that Alleghany Corporation, a corporation organized and existing under the laws of the State of Maryland (hereinafter called "Alleghany"),

In consideration of One Dollar ($1) and other good and valuable consideration, receipt whereof is hereby acknowledged,

Pursuant to authority conferred upon it by judgment of the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954) and pursuant to a vote of its Board of Directors,

Does hereby remise, release and discharge Clint W. Murchison, Jr. and John D. Murchison, individually and as partners, doing business under the firm name and style of Murchison Brothers, of and from all claims, demands and causes of action of whatever kind or nature, whether at law or in equity, which against them have arisen, or now exist or may hereafter arise by reason of any of the matters and things alleged, referred to or embraced in the consolidated amended complaint heretofore served in an action entitled "Sadie Zenn, et al., Plaintiffs, against J. J. Anzalone, et al., Defendants", brought in the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954), or arising in any way out of the facts or transactions therein referred to.

IN WITNESS WHEREOF, Alleghany Corporation has caused these presents to be executed in its name and behalf and its corporate seal to be hereunto affixed by Charles T. Ireland, Jr., its Executive Vice-President hereunto duly authorized, this 13th day of May, 1960.

ALLEGHANY CORPORATION

By: .....

[fol. 2399]

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.

On the 13th day of May, 1960, before me came CHARLES T. IRELAND, JR. to me known, who, being by me duly sworn, did depose and say that he resides at 11 Orchard Road,

Briarcliff Manor, New York; that he is the Executive Vice President of Alleghany Corporation, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

THOMAS H. GOLDER

Notary Public, State of New York
No. 60-6567425
Qualified in Westchester County
Certificate filed in New York County
Commission expires Mar. 30, 1962

[fol. 2400]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT No. K-156L

RELEASE BY ALLEGHANY CORPORATION TO R. W. PURCELL

KNOW ALL MEN BY THESE PRESENTS that Alleghany Corporation, a corporation organized and existing under the laws of the State of Maryland (hereinafter called "Alleghany"),

In consideration of One Dollar ($1) and other good and valuable consideration, receipt whereof is hereby acknowledged,

Pursuant to authority conferred upon it by judgment of the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954) and pursuant to a vote of its Board of Directors,

Does hereby remise, release and discharge R. W. Purcell of and from all claims, demands and causes of action of

whatever kind or nature, whether at law or in equity, which against him have arisen, or now exist or may hereafter arise by reason of any of the matters and things alleged, referred to or embraced in the consolidated amended complaint heretofore served in an action entitled "Sadie Zenn, et al., Plaintiffs, against J. J. Anzalone, et al., Defendants", brought in the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954), or arising in any way out of the facts or transactions therein referred to.

IN WITNESS WHEREOF, Alleghany Corporation has caused these presents to be executed in its name and behalf and its corporate seal to be hereunto affixed by Charles T. Ireland, Jr., its Executive Vice-President hereunto duly authorized, this 13th day of May, 1960.

ALLEGHANY CORPORATION

By: .....

[fol. 2401]

STATE OF NEW YORK)
) *ss.*
COUNTY OF NEW YORK)

On the 13th day of May, 1960, before me came CHARLES T. IRELAND, JR. to me known, who, being by me duly sworn, did depose and say that he resides at 11 Orchard Road, Briarcliff Manor, New York; that he is the Executive Vice President of Alleghany Corporation, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

.....

[fol. 2402]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT No. K-156R

RELEASE BY ALLEGHANY CORPORATION TO ANITA O'KEEFFE YOUNG AS EXECUTRIX OF THE ESTATE OF ROBERT R. YOUNG, DECEASED.

KNOW ALL MEN BY THESE PRESENTS that Alleghany Corporation, a corporation organized and existing under the laws of the State of Maryland (hereinafter called "Alleghany"),

In consideration of One Dollar ($1) and other good and valuable consideration, receipt whereof is hereby acknowledged,

Pursuant to authority conferred upon it by judgment of the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954) and pursuant to a vote of its Board of Directors,

Does hereby remise, release and discharge Anita O'Keeffe Young as Executrix of the Estate of Robert R. Young, deceased, of and from all claims, demands and causes of action of whatever kind or nature, whether at law or in equity, which against her have arisen, or now exist or may hereafter arise by reason of any of the matters and things alleged, referred to or embraced in the consolidated amended complaint heretofore served in an action entitled "Sadie Zenn, et al., Plaintiffs, against J. J. Anzalone, et al., Defendants", brought in the Supreme Court of the State of New York, County of New York (County Clerk's Index No. 7244/1954), or arising in any way out of the facts or transactions therein referred to.

IN WITNESS WHEREOF, Alleghany Corporation has caused these presents to be executed in its name and behalf and its corporate seal to be hereunto affixed by Charles T. Ire-

land, Jr., its Executive Vice-President hereunto duly authorized, this 13th day of May, 1960.

ALLEGHANY CORPORATION

By: /s/ CHARLES T. IRELAND, JR.

[fol. 2403]

STATE OF NEW YORK)
) *ss.*
COUNTY OF NEW YORK)

On the 13th day of May, 1960, before me came CHARLES T. IRELAND, JR. to me known, who, being by me duly sworn, did depose and say that he resides at 11 Orchard Road, Briarcliff Manor, New York; that he is the Executive Vice President of Alleghany Corporation, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

/s/ THOMAS H. GOLDER

Thomas H. Golder
Notary Public, State of New York
No. 60-6567425
Qualified in Westchester County
Certificate filed in New York County
Commission expires Mar. 30, 1962

[fol. 2404]

IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT No. K-162

INVESTORS DIVERSIFIED SERVICES,

ESTABLISHED 1894
(As Investors Syndicate)
MINNEAPOLIS 2, MINNESOTA

Fifty-Fifth Annual Report

December 31, 1948

1740
[fol. 2405]

INVESTORS DIVERSIFIED SERVICES, INC.

ESTABLISHED 1894

(As Investors Syndicate)

EXECUTIVE OFFICES

Roanoke Building, Minneapolis 2, Minn.

Board of Directors

J. F. TWOHY, *Chairman of the Board*

GALEN VAN METER, *Vice Chairman of the Board*

J. J. ANZALONE — H. J. GUILD

E. E. CRABB — R. W. PURCELL

Principal Officers

J. F. TWOHY	*Chairman of the Board*
GALEN VAN METER	*Vice Chairman of the Board*
E. E. CRABB	*President*
H. K. BRADFORD	*Vice President*
H. C. CARR	*Vice President*
GRADY CLARK	*Vice President*
D. W. GREEN	*Vice President*
D. F. GRUENHAGEN	*Vice President*
E. FRANKLIN HATCH	*Vice President*
C. D. MCGUIGGAN	*Vice President*
C. J. MOORE	*Vice President and Secretary*
J. R. RIDGWAY, SR.	*Vice President*
D. E. RYAN	*Vice President*
N. B. WAAG	*Vice President and Controller*
J. B. RACEY	*Treasurer*
T. L. KENEALY	*Auditor*

2405

[fol. 2406]

INVESTORS DIVERSIFIED SERVICES, INC.

Financial Statements

GEORGE ROSSETTER & Co.

CERTIFIED PUBLIC ACCOUNTANTS

To the Board of Directors and
Security Holders of Investors Diversified Services, Inc.:

We have examined the balance sheet of Investors Diversified Services, Inc. (successor by change in name to Investors Syndicate) as of December 31, 1948, and the statement of net income and earned surplus for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We made a similar examination for the year ended December 31, 1947.

Cash, securities, and first mortgages and other loans, as set forth in the accompanying balance sheet, were verified by us by count of the cash and inspection of the documents on hand; by certifications obtained from depositaries for cash on deposit and for investments held in safekeeping; and by confirmation or inspection of investments deposited with states and provinces or their depositaries. Uncompleted transactions were verified by confirmations from brokers and others. We also received confirmations to the extent we deemed adequate from certain mortgagors and other borrowers as to the correctness of their obligations as shown on the Company's books.

The accounts of two of the Company's Canadian subsidiaries were examined by other independent public accountants and facts as to the book value of investments therein, and earnings applicable to such investments, are reflected herein on the basis of the reports of such accountants. The accounts of other subsidiaries of the Company were examined by us.

As indicated in Section (A) of Note 1 to the accompanying financial statements, the Company does not follow the generally accepted accounting practice of charging income with the cost of increments to mature installment certificates as such certificates progress during the certificate year, but such increments are charged against income only at dates of completion of certificate years, which dates, for the much greater part, do not coincide with the end of the Company's fiscal year. In addition to the reserves provided to dates of last completed certificate years, the Company maintained a special reserve of $2,374,355.10, of which $374,355.10 was appropriated in 1948, and $2,000,000.00 in prior years to improve its reserves. The Company also appropriated $1,203,143.61 from surplus in 1948 (equal to remaining balance thereof) to a reserve for contingencies, which reserve is available for improving certificate reserves as well as for other purposes. As indicated in the accompanying balance sheet, the Company's reserves were considerably in excess of the current obligation for cash surrender values as provided by the terms of outstanding certificates.

Except as to the information contained in Section (B) of Note 1 to the accompanying financial statements, which sets forth the results of a study of the Company's reserves by independent actuaries, and as to which we express no opinion for the reason that the information was not verified by us, in our opinion, based upon the examination made by us and upon the reports of other independent public accountants heretofore referred to, the accompanying balance sheet and statement of net income and earned surplus, together with the notes thereto, fairly present the financial position of Investors Diversified Services, Inc. (successor by change in name to Investors Syndicate) at December 31, 1948 and 1947, and the results of its operations for the two years ended December 31, 1948, in conformity with generally accepted accounting principles, except as stated in the preceding paragraph, applied on a consistent basis.

Minneapolis, Minnesota
April 20, 1949

GEORGE ROSSETTER & Co.

INVESTORS DIVERS

Balance Sheet, Dec

ASSETS (Note 2)

	Market Value (Note 5) 1948	Market Value (Note 5) 1947	December 31, 1948	December 31, 1947
CASH AND INVESTMENTS (Note 3):				
Cash (Note 4):				
On hand and in banks			$ 3,712,757.10	$ 3,019,797.22
Deposited with states and provinces			5,226,851.66	7,917,381.19
Total cash			$ 8,939,608.76	$ 10,937,178.41
Securities:				
Bonds at amortized cost:				
United States Government	$ 3,956,913.65	$15,444,030.17	$ 3,910,820.52	$ 15,368,202.79
Other	24,967,746.24	24,719,231.60	25,608,741.58	25,379,556.65
Preferred stocks at average cost	20,638,010.76	24,688,322.01	24,453,657.73	28,437,323.19
Common stocks at average cost	325,305.03	338,573.66	298,218.43	298,218.43
Total securities	$49,887,975.68	$65,190,179.64	$ 54,271,438.26	$ 69,483,301.06
Less reserve (Note 5)			36,717.26	552,042.54
Securities—net	$49,887,975.68	$65,190,179.64	$ 54,234,721.00	$ 68,931,258.52
Mortgages and other liens on real estate—principal balances, less reserves:				
First mortgages:				
Insured by Federal Housing Administration			$ 96,077,360.03	$ 66,201,454.70
Partially guaranteed by Veterans Administration			24,899,256.22	41,487,268.32
Other first mortgages and first liens on real estate			74,512,961.97	65,833,288.18
Second mortgages fully guaranteed by Veterans Administration			5,146,427.89	1,820,873.43
Total mortgages and other liens on real estate			$200,636,006.11	$175,342,884.63
Loans on certificates			$ 9,508,277.95	$ 7,259,095.11
Real estate at depreciated cost or less			$ 416,801.73	$ 52,372.39
Accrued interest and dividends receivable on investments			$ 1,352,191.91	$ 1,2[illegible]8.84
Total cash and investments			$275,087,607.46	$263,805,057.90
OTHER ASSETS:				
Investments in capital stock of subsidiary companies—at book value of underlying net assets, less minority interests (Note 8)			$ 4,434,051.55	$ 3,675,106.53
Receivables from subsidiary companies			2,591,153.43	2,427,197.59
Receivables from affiliated companies			298,107.68	37,205.63
Due from brokers for securities sold			232,317.12	
Receivables from sundry debtors, less reserves			306,705.55	237,728.07
Cash surrender value of life insurance on officers for benefit of the Company			49,700.03	47,340.67
Office furniture and fixtures—at depreciated cost			437,474.99	414,155.51
Inventories of supplies and other deferred charges			194,034.15	123,082.41
Total other assets			$ 8,543,544.60	$ 6,961,816.41
TOTAL			$283,631,152.06	$270,766,874.31

IED SERVICES, INC.

mber 31, 1948 and 1947

LIABILITIES (Note 2)

	December 31, 1948	December 31, 1947
CERTIFICATE RESERVES (Notes 1 and 8):		
Installment certificates:		
Cash surrender values attained at dates of last completed certificate years	$228,017,307.55	$211,531,927.85
Reserve payments applicable to current certificate years	18,050,896.34	18,937,834.83
Payments made in advance of current certificate years' requirements and accrued interest thereon	15,049,696.36	16,084,384.35
Reserves to stabilize financing costs	5,305,500.00	5,807,542.30
Special reserve	2,374,355.10	2,000,000.00
Other	1,404,599.43	1,429,866.71
Fully paid certificates	9,451,193.53	9,055,701.52
Total certificate reserves	$279,653,538.31	$264,847,257.56
OTHER LIABILITIES:		
Bank loans – secured		$ 2,448,000.00
Accounts payable:		
Due to brokers for securities purchased	$ 113,860.60	
Commissions due to sales representatives	194,914.81	190,122.51
Subsidiary companies	56,997.21	65,286.39
Sundry creditors	317,686.13	274,687.68
Unearned interest on loans	141,414.75	123,353.77
Undistributed collections from mortgagors and certificate holders	170,635.97	61,202.12
Accrued taxes	87,450.72	80,615.87
Accrued sales representatives' incentive pay bonus	212,327.97	202,325.12
Other accrued expenses	25,459.33	17,157.03
Total other liabilities	$ 1,320,747.49	$ 3,462,750.49
CAPITAL STOCK, SURPLUS, AND RESERVE FOR CONTINGENCIES:		
Capital Stock:		
Common, Class "A" (not preferred and non-voting) – $5 par–authorized, 260,000 shares; outstanding, 175,836.37 shares	$ 879,181.85	$ 879,181.85
Common – $5 par – authorized, 140,000 shares; outstanding 114,908.16 shares	574,540.80	574,540.80
Total capital stock	$ 1,453,722.65	$ 1,453,722.65
Reserve for contingencies	1,203,143.61	
Earned surplus, per accompanying statement (Notes 1, 7, and 8)	Nil	1,203,143.61
Total capital stock, surplus, and reserve for contingencies (Note 9)	$ 2,656,866.26	$ 2,656,866.26
TOTAL	$283,631,152.06	$270,766,874.31

INVESTORS DIVERSIFIED SERVICES, INC.

Statement of Net Income and Earned Surplus
For the Years Ended December 31, 1948 and 1947

	Year Ended December 31	
	1948	1947
GROSS INCOME:		
Gross income from investments, mortgage operations, certificate servicing, and management services:		
Investment income:		
Interest on bonds, mortgages, and other loans	$ 10,180,570.77	$ 8,617,003.33
Cash dividends on stocks	1,059,295.69	1,414,704.31
Mortgage operations:		
Premiums on mortgages sold:		
To subsidiary companies	563,829.46	619,192.18
To others	60,521.28	409,624.78
Service fees:		
On mortgages owned	34,240.59	24,845.05
On mortgages serviced for subsidiary companies	405,013.98	233,985.91
On mortgages serviced for others	113,214.90	100,661.32
Fees on new construction loans	327,156.75	121,556.27
Other mortgage income	400,287.95	310,084.72
Installment certificate servicing income and interest equalization credits	661,369.25	735,836.57
Investment management and collection fees from subsidiaries and affiliated companies	931,181.38	855,215.29
Other	93,964.04	7,945.23
Total gross income from investments, mortgage operations, certificate servicing, and management services	$ 14,830,646.04	$ 13,450,654.96
Gross underwriting fees from subsidiary and affiliated companies	7,036,801.87	6,358,794.75
Total gross income	$ 21,867,447.91	$ 19,809,449.71
COSTS AND EXPENSES:		
Applicable to certificates, investments, mortgage operations, and management services:		
Appropriations to installment certificate cash surrender values and reserves (Note 1)	$ 11,719,688.42	$ 10,856,921.77
Less net recoveries from lapses and surrenders (includes interim payment recoveries – 1948, $34,351.96; 1947, $54,530.02)	144,282.38	125,130.61
Remainder	$ 11,575,406.04	$ 10,731,791.16
Interest on advance payments, on miscellaneous certificates and on additional credits	820,459.36	846,439.68
Mortgage branch office and agency expenses–per accompanying statement	1,797,821.35	1,970,843.88
Portion of sales agency fees and expenses regarded as being applicable to installment contract collection expense	245,252.42	237,377.44
General and administrative expenses–portion–per accompanying statement	2,037,313.16	1,684,416.34
Total costs and expenses applicable to certificates, investments, mortgage operations, and management services	$ 16,476,252.33	$ 15,470,868.50

[fol. 2410]

INVESTORS DIVERSIFIED SERVICES, INC.

Statement of Net Income and Earned Surplus For the Years Ended December 31, 1948 and 1947 (Cont.)

	Year Ended December 31	
	1948	1947
COSTS AND EXPENSES (CONT.):		
Underwriting expenses:		
Commissions and incentive pay bonuses to sales representatives	$ 4,609,655.25	$ 4,092,668.57
Collection fees and other allowances to sales agencies – portion regarded as applicable to selling and promotional expense	207,367.11	211,603.64
Advertising and promotional expense	228,403.00	155,840.52
Other direct costs and expenses	182,930.88	168,100.11
General and administrative expenses – portion – per accompanying statement	558,502.54	533,867.44
Total underwriting expenses	$ 5,786,858.78	$ 5,162,074.28
Total costs and expenses	$22,263,111.11	$20,632,942.78
INCOME (LOSS*):		
From investments, mortgage operations, certificate servicing, and management services, less costs and expenses applicable thereto	$ 1,645,606.29*	$ 2,020,213.54*
From underwriting fees less expenses applicable thereto	1,249,943.09	1,196,720.47
Total (loss*)	$ 395,663.20*	$ 823,493.07*
Income credits – net	10,109.79	9,911.67
INCOME (LOSS*) BEFORE PROFIT ON INVESTMENT TRANSACTIONS	$ 385,553.41*	$ 813,582.00*
PROFIT (LOSS*) ON INVESTMENT TRANSACTIONS:		
Realized profit (loss*) on investment transactions:		
Securities (bonds, first-in, first-out basis; stocks, average cost basis)	$ 515,325.28*	$ 552,042.54
Real estate (depreciated cost basis)	5,136.74*	10,429.15*
Net realized profit (loss*) on investment transactions	$ 520,462.02*	$ 541,613.39
Less provision for possible future losses (credit for reserves applied to reduce losses#):		
Securities (Note 5)	$ 515,325.28#	$ 552,042.54
Real estate	6,093.38#	14,108.39#
Net provision (credit#)	$ 521,418.66#	$ 537,933.15
Profit on investment transactions – net	$ 956.64	$ 3,674.24
NET INCOME (LOSS*) FOR THE YEAR (Note 1)	$ 384,596.77*	$ 809,907.76*
Net credit from decrease in asset valuation reserves		17,511.83
Proportionate share of earnings of subsidiary companies for the year	758,951.87	406,860.16
TOTAL	$ 374,355.10	$ 385,535.97*
EARNED SURPLUS AT BEGINNING OF THE YEAR	1,203,143.61	1,588,679.58
GROSS SURPLUS	$ 1,577,498.71	$ 1,203,143.61
DEDUCTIONS:		
Appropriation for additional reserves for installment certificates (Note 1)	$ 374,355.10	
Appropriation for reserve for contingencies	1,203,143.61	
Total deductions	$ 1,577,498.71	
EARNED SURPLUS AT END OF THE YEAR (Notes 1, 7, and 8)	Nil	$ 1,203,143.61

INVESTORS DIVERSIFIED SERVICES, INC.

General and Administrative Expenses For the Years Ended December 31, 1948 and 1947

	Year Ended December 31	
	1948	1947
Salaries	$ 1,963,174.61	$ 1,631,777.60
Attorneys' fees and expenses	112,840.77	40,271.84
Traveling expenses	137,995.34	110,968.84
Taxes and registration fees (other than taxes on income)	141,886.60	139,983.10
Rents	91,905.38	78,391.65
Telephone, telegraph, postage, and express	89,118.24	77,256.05
Depositary fees	59,004.28	62,584.91
Accounting, tax service, state examination fees and expenses, and actuarial survey	68,110.99	67,103.57
Printing and stationery	80,892.05	76,890.94
Provision for depreciation of office furniture and fixtures	51,185.86	46,297.29
Directors' fees	4,999.92	7,916.70
General office expenses	106,809.63	90,397.41
Other expenses	150,146.58	121,045.97
Total	$ 3,053,070.25	$ 2,550,885.87
Less amounts charged to subsidiary companies	457,254.55	332,602.09
Remainder	$ 2,595,815.70	$ 2,218,283.78

NOTE — General and administrative expenses, after deduction of charges to subsidiary companies for use of facilities and personnel, were distributed as follows: To costs and expenses of servicing contracts and certificates, investments, mortgage operations, and management agreements — 1948, $2,037,313.16; 1947, $1,684,416.34; to underwriting expenses — 1948, $558,502.54; 1947, $533,867.44. The distribution of the general and administrative expenses as between the two sections of the income statement is designed to follow the activities of the Company as set forth in those sections.

Mortgage Branch Office and Agency Expenses for the Years Ended December 31, 1948 and 1947

Commissions and premiums on new loans:		
To subsidiary companies	$ 115,298.38	$ 331,337.53
To others	474,675.35	605,292.24
Salaries	541,649.37	483,817.04
Service fees:		
To subsidiary companies	139,415.32	140,770.60
To others	261,770.82	161,908.75
Rent	54,702.13	48,604.81
Telephone, telegraph, postage, and express	56,274.66	47,466.21
Traveling and automobile expenses	42,414.79	47,015.28
New loan expense	7,744.69	29,170.90
Other expenses	103,875.84	75,460.52
Total	$ 1,797,821.35	$ 1,970,843.88

[fol. 2412]

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, December 31, 1948

1. INSTALLMENT CERTIFICATE RESERVES:

(A) The Company is not subject to the reserve standards of the Investment Company Act of 1940, nor is it subject to any rules of the Securities and Exchange Commission governing the form and content of the financial statements or the accounting policies.

The Company does not follow the generally accepted accounting principle of accruing certificate reserves as such certificates progress during the certificate year, by charges against income, but instead the Company has followed the practice of deferring the accrual of such certificate reserve until dates of completion of certificate years, which dates, for the much greater part, do not coincide with the end of the Company's fiscal year.

Based on the Company's own reserve program, the rates at which the installment certificate reserves are improved at the end of certificate years differ with each series of certificates outstanding, and generally from year to year within each series. Had such reserves been accrued in accordance with generally accepted accounting principles, the total certificate reserves would have been increased and capital and surplus decreased at December 31, 1948, by $4,040,644.90. This would have produced an accounting deficit in capital and surplus at December 31, 1948, of $1,383,778.64 (on basis of carrying investments at cost). On such basis, the increased costs of accumulating certificate reserves would have reduced net income by approximately $300,000 for the year 1948 and $450,000 for 1947.

(B) The Company engaged an independent firm of actuaries, Joseph Froggatt & Co., Inc., of New York City, to make an analysis of the Company's installment certificates outstanding as to duration, and experience as to lapses, stretch-outs and surrenders thereon. They also made a study of the Company's earnings during the years 1940 through 1943 inclusive, which showed that the average net earnings (exclusive of losses from distribution of securities for affiliated companies, net earnings of wholly-owned subsidiaries, and profits and losses from sale of portfolio securities) was 4.535% on the Company's total assets. A comparison between the reserves computed by the actuaries on this 4.535% basis, the reserves actually maintained by the Company, and the reserves that would have been provided on the basis of theoretical rate of improvement of 3½% (after allowances for unrealized benefits from delinquent payments and surrenders) is as follows:

(000 omitted)

	Face Amount of Installment Certificates Outstanding	Reserves Per Actuaries' Computation*	Applicable Installment Certificate Reserves Maintained by Company	Reserves Computed on Theoretical 3½% Basis
December 31:				
1943	$648,149	$168,277	$160,477	$190,302
1944	593,584	183,529	176,358	203,973
1945	557,231	202,372	196,157	221,854
1946	530,202	222,883	217,163	241,050
1947	505,754	243,866	238,442	260,414
1948	476,114	258,676	254,054	273,204

*Based on 4.535% rate.

The Company has developed sources of income other than its pure investment income from which it expects to receive additional net earnings. Such other sources of income include that realized from management and underwriting fees received from affiliated and subsidiary companies.

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, December 31, 1948 (Cont.)

The Company's obligations for cash surrender values are specifically provided for in the exact terms of the certificates, and at December 31, 1948, were considerably less than the amount of certificate reserves maintained by the Company.

2. Canadian Assets and Liabilities

The book value of net assets employed in Canada at December 31, 1948, aggregated $1,022,152.39 ($23,535,083.16 in assets less $22,512,930.77 in liabilities), after conversion into United States dollars at the "official" rate of exchange of par.

Canadian assets are realizable in United States currency only by permit from the Canadian Exchange Control Board.

3. Deposits of Assets

Certain deposits of assets are maintained by the Company pursuant to requirements of various states and provinces, and a central deposit is maintained with the Treasurer of the State of Minnesota pursuant to Chapter 591, Laws of Minnesota, 1943, as amended, with respect to its liabilities, as defined in such Act, under certificates in the United States to the extent that such liabilities are not covered by deposits maintained with other states. As of December 31, 1948, the following assets were so deposited:

	Total	Central Depositary	Other States and Provinces
Cash	$ 5,226,851.66	$ 4,299,774.52	$ 927,077.14
Securities	53,808,146.19	26,244,355.07	27,563,791.12
Mortgages on real estate	195,948,469.94	71,266,914.05	124,681,555.89
Receivable from brokers for securities sold but not delivered	232,317.12		232,317.12
Total	$255,215,784.91	$101,811,043.64	$153,404,741.27

The foregoing amounts represent the book values of securities, exclusive of accrued interest and dividends receivable, and principal amounts of mortgages and other liens on real estate. The total deposit requirements at December 31, 1948 aggregated $251,615,423.06.

4. Cash

At December 31, 1948, the Company held cash in trust accounts in the aggregate amount of $2,640,469.00, representing funds collected from mortgagors for future payments of taxes and insurance, and held agency collections for others in the amount of $456,790.52. Drafts issued by the Company which had not been presented for payment at that date aggregated $815,518.84. These amounts, aggregating $3,912,778.36, have been deducted from the cash balances and from the contra liability accounts.

5. Securities

The market values of listed and active securities at December 31, 1948, are based upon closing published market quotations at that date. The market values of unlisted and inactive securities are based upon the mean between quoted bid and asked prices, except that, in the absence of available quotations, eight issues were priced at their book value of $3,419,916.65, which in the opinion of the Board of Directors was equivalent to fair market value.

[fol. 2414]

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, December 31, 1948 (Cont.)

The Company does not adjust the carrying value of individual securities to market except in instances where the securities are in default or are not fully income producing. All securities owned at December 31, 1948, were fully income producing and none were in default. A general reserve for possible future losses on liquidation of securities in the amount of $352,042.54 (which amount was equal to the security profits for the year) was established in 1947 by charge against income, and $515,325.28 of this amount was applied to reduce security losses in 1948, reducing the reserve to $36,717.26 at December 31, 1948.

The cost of securities owned at December 31, 1948 and 1947 exceeded the market value thereof in amounts of $4,346,745.32 and $3,741,078.88, respectively. There was an excess of market value over cost of securities at December 31, 1946 of $934,544.74. The increase in unrealized depreciation of securities was $605,666.44 for 1948 and $4,675,623.62 for 1947.

6. Asset Maintenance Requirements

Under conditions of its certificates, the Company is required to maintain qualified assets on designated liabilities thereunder, less loans thereon, in ratios ranging from 100% to 110%. Such designated liabilities consist of the cash values as set forth in the various certificates, exclusive of Paid Up certificates and exclusive of advance payments on Series "D" and "F" installment certificates, which in the opinion of legal counsel for the Company are not designated as liabilities subject to such asset ratio maintenance provisions.

In general, qualified assets required to be maintained shall consist of cash, government bonds, obligations issued or guaranteed in whole or in part by the United States or Canadian governments or by government-chartered institutions or agencies, first mortgages and first deeds of trust on improved real estate, and/or in assets of the kind which life insurance companies are permitted by the laws of the State of New York to hold or acquire. At December 31, 1948, the Company was required to maintain qualified assets in the amount of $253,149,711.19 (exclusive of certificate loans), and the Company had qualified assets at that date in excess of such amount.

7. Dividend Restrictions

According to the terms of the Series G certificates no dividends shall be distributed to stockholders of the Company in any calendar year unless, not later than December 31, of the second preceding year, the Board of Directors shall have determined upon a credit to each Series G certificate which shall attain a new optional settlement value during such calendar year in an amount equal to at least one-half of one per cent of such new optional settlement value. The Board of Directors has not determined upon additional credits for Series G certificates attaining new optional settlement values subsequent to December 31, 1943, and therefore, the Company is presently restricted from paying dividends to its stockholders. Further, under sub-section (h) of Section 28 of the Federal Investment Company Act of 1940, the Company may be restricted from paying dividends to its stockholders.

8. Investments in Subsidiaries

Investments in subsidiary companies are recorded on the basis of the Company's equity in the book values of the subsidiaries' net assets. The book value of securities held by subsidiaries at December 31, 1948, was $1,990,915.97 in excess of market value at that date.

Credits to earned surplus for undistributed earnings of subsidiary companies aggregated $2,784,425.31 at December 31, 1948. The earned surplus of one of the Company's subsidiaries is restricted as to dividend payments during 1948, by reason of declaration of addi-

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, December 31, 1948 (Concluded)

tional credits for that year at a rate lower than the minimum which could be declared without such restriction. Credits to earned surplus for undistributed earnings of that subsidiary aggregated $1,688,812.28 at December 31, 1948.

9. CONTINGENT MORTGAGE REPURCHASE AGREEMENT

The Company has endorsed, or agreed to repurchase under certain conditions, notes secured by first mortgages and first deeds of trust which it sells to its 96.8% owned subsidiary, Investors Syndicate Title & Guaranty Company, New York, or which said subsidiary may acquire pursuant to its trust agreements under the terms of certain series of such subsidiary's certificates sold prior to 1942. The notes so endorsed or which on December 31, 1948, were subject to such repurchase agreements (plus accrued interest thereon) aggregated $20,290,325.66, including $10,940,490.23 of FHA insured mortgages. Eleven of these mortgages with balances of $42,819.01 were over six months delinquent but were well secured.

10. FEDERAL INCOME TAXES

By reason of the provisions of the Internal Revenue Code, as amended, the taxable income of the Company may be included in a consolidated federal income tax return with its domestic subsidiaries, and the Company has elected to file its returns for 1948 and 1947 on that basis. There were no federal taxes on income payable by the Company for those years on either a consolidated or unconsolidated basis. Federal income taxes for years subsequent to 1941 have not been finally determined.

11. GROSS RATES OF RETURN ON INVESTMENTS

The average gross rates of return (exclusive of profit or loss on sales) realized by the Company on marketable securities, mortgages, and certificate loans for the year 1948 and the year 1947, based upon the monthly average book values of the investments, were as follows:

	1948	1947
Securities	3.56%	3.37%
Mortgages	4.38%	4.44%
Certificate loans	5.64%	5.71%
Combined average	4.24%	4.09%

[fol. 2416]

INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, December 31, 1948

SUMMARY OF INVESTMENTS IN SECURITIES

Description	Market Value*
BONDS:	
Domestic bonds:	
U. S. Government and U. S. Government institutions	$ 3,956,913.65
Municipal	83,232.83
Railroad	4,600,076.25
Public utility	2,097,427.50
Industrial	4,284,148.65
Total domestic bonds	$15,621,798.88
Canadian bonds:	
Dominion Government and Dominion Government Guaranteed	$ 3,065,313.75
Provincial	4,001,388.76
Municipal	773,981.25
Railroad	51,250.00
Public utility and industrial	5,410,927.25
Total Canadian bonds	$13,302,861.01
Total bonds	$28,924,659.89
PREFERRED STOCKS:	
Domestic preferred stocks:	
Railroad	$ 533,315.00
Public utility	6,366,460.75
Industrial	13,465,188.13
Total domestic preferred stocks	$20,364,963.88
Canadian preferred stocks	273,046.88
Total preferred stocks	$20,638,010.76
COMMON STOCKS – Domestic	$ 325,305.03
Total investments in securities	$49,887,975.68

DETAILS OF INVESTMENTS IN SECURITIES

Description	Face amount of bonds or number of shares of stock	Market Value*
BONDS:		
DOMESTIC BONDS:		
U. S. GOVERNMENT AND U. S. GOVERNMENT INSTITUTIONS:		
Treasury Bonds, 2 %, 1952/50	$ 30,000.00	$ 30,309.38
Treasury Bonds, 2½%, 1952/50	50,000.00	51,265.63
Treasury Bonds, 2½%, 1954/51	55,000.00	57,165.63

INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, December 31, 1948—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
BONDS — continued		
Treasury Bonds, 2 %, 1954/52	$ 255,000.00	$ 258,585.94
Treasury Bonds, 2½%, 1956/54	35,000.00	36,750.00
Treasury Bonds, 2½%, 1968/63	840,000.00	852,600.00
Treasury Bonds, 2½%, 1970/65	265,000.00	267,650.00
Treasury Bonds, 2½%, 1972/67	180,000.00	180,900.00
Treasury Bonds, 2½%, 1972/67	1,900,000.00	1,909,500.00
F.H.A. Mutual Mortgage Insurance Fund Deb., Series "A" (Reg.), 3%, 1952-61	287,250.00	300,061.76
F.H.A. War Housing Insurance Fund Deb., Series "H" (Reg.), 2½%, 1958	12,050.00	12,125.31
Total U. S. Government and U. S. Government Institutions		$3,956,913.65
MUNICIPAL:		
Sacramento Municipal Utility District, Series "D," 5%, 1970-73	$ 57,000.00	$ 83,232.83
RAILROAD:		
Baltimore & Ohio R. R. Co., Pittsburgh, Lake Erie & West Virginia, "A," 4%, 1980	$ 261,000.00	$ 231,963.75
Baltimore & Ohio R. R. Co., 1st Mtge., "A," 4%, 1975	5,000.00	4,250.00
Birmingham Terminal Co., 1st Mtge., 4%, 1957	75,000.00	75,750.00
Boston & Maine R. R., 1st Mtge., "RR," 4%, 1960	194,000.00	160,535.00
Chicago & Eastern Illinois R. R. Co., 1st Mtge., Series "B," 3½%, 1985	480,000.00	358,800.00
Chicago & Western Indiana R. R. Co., 1st and Ref. Mtge., S. F., Series "D," 4½%, 1962	427,000.00	450,485.00
Cleveland Short Line R. R., 1st Mtge., 4½%, 1961	236,000.00	238,655.00
Cleveland Union Terminal Co., 1st Mtge., S. F., Series "B," 5%, 1973	370,000.00	388,962.50
Denver & Rio Grande Western R. R. Co., 1st Mtge., Series "A," 3-4%, 1993	226,000.00	201,140.00
Erie R. R. Co., 1st Cons. Mtge., Series "G," 3½%, 2000	232,000.00	196,040.00
Gulf, Mobile & Ohio R. R. Co., 1st and Ref. Mtge., Series "D," 3½%, 1969	200,000.00	190,500.00
Louisville & Nashville R. R. Co., 1st and Ref. Mtge., Series "G," 2½%, 2003	90,000.00	71,662.50
New York Central & Hudson River R. R., Mtge. (Reg.), 3½%, 1997	50,000.00	38,500.00
New York Central & Hudson River R. R., Mtge., 3½%, 1997	370,000.00	302,937.50
New York, New Haven & Hartford R. R. Co., 1st and Ref., Series "A," 4%, 2007	98,000.00	64,435.00
Northern Pacific Ry. Co., Gen. Lien, 3%, 2047	150,000.00	92,250.00
Northern Pacific Ry. Co., Gen. Lien (Reg.), 3%, 2047	40,000.00	23,550.00
Pennsylvania R. R. Co., Gen. Mtge., Series "B," 5%, 1968	50,000.00	53,000.00
Pennsylvania R. R. Co., Gen. Mtge., Series "D," 4½%, 1981	15,000.00	14,625.00
Peoria & Pekin Union Ry. Co., 1st Mtge., Series "A," 5½%, 1974	193,000.00	201,685.00
Pittsburgh, Cincinnati, Chicago & St. Louis R. R. Co., Gen. Mtge., Series "E," 3½%, 1975	10,000.00	8,600.00

INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, December 31, 1948—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
BONDS — continued		
St. Louis, San Francisco Ry. Co., 2nd Mtge., Conv. Income (Reg.), 4½%, 2022	$ 150,000.00	$ 90,375.00
St. Louis, San Francisco Ry. Co., 1st Mtge., Series "A," 4%, 1997	300,000.00	252,000.00
Texas & Pacific Railway Co., Gen. & Ref. Mtge., Series "E," 3½%, 1985	125,000.00	124,375.00
Western Pacific R. R. Co., 1st Mtge. (Reg.), 4%, 1974	750,000.00	765,000.00
Total railroad		$4,600,076.25
PUBLIC UTILITY:		
American Telephone & Telegraph Co., Conv. Deb., 2¼%, 1961	$ 500,000.00	$ 518,750.00
Brooklyn Union Gas Co., S. F. Deb., 4%, 1969	145,000.00	143,368.75
Consolidated Edison Co., Conv. Deb., 3%, 1963	250,000.00	267,500.00
Consolidated Gas, Electric Light & Power Co. of Baltimore, Conv. Deb., 2¼%, 1962	250,000.00	255,000.00
Iowa Electric Co., 1st Mtge., Series "A," 4%, 1961	33,000.00	33,330.00
Joplin (Mo.) Water Works Co., 1st Mtge., Series "A," 5%, 1957	25,000.00	26,250.00
Kokomo Water Works Co., 1st Mtge., Series "A," 5%, 1958	20,000.00	21,000.00
Laclede Gas Light Co., Conv., S. F. Deb., 4½%, 1963	250,000.00	268,125.00
Los Angeles Transit Lines, 1st Mtge., 3½%, 1950-54	65,000.00	64,350.00
Monongahela Valley Water Co., 1st Mtge., G't'd., Series "A," 5¼%, 1950	25,000.00	25,062.50
New England Electric System, Deb., 3¼%, 1977	150,000.00	138,750.00
Philadelphia Co., Coll. Trust, S. F., 4¼%, 1961	89,000.00	93,783.75
Public Service Co. of Indiana, Inc., Conv. Deb., 2¾%, 1962	250,000.00	266,250.00
Twin City Rapid Transit Co., Coll. Trust, 4%, 1964	100,000.00	82,250.00
Virginia Electric & Power Co., Conv. Deb., 3¼%, 1968	250,000.00	269,062.50
West Penn Electric Co., Deb., 5%, 2030	207,000.00	224,595.00
Total public utility		$2,697,427.50
INDUSTRIAL:		
American Airlines, Inc., S. F. Deb., 3%, 1968	$275,000.00	$ 211,750.00
Dewey and Almy Chemical Co., Conv. Deb., 2¾%, 1976	152,000.00	133,380.00
Domestic Credit Corp., Subordinated Note, 2½%, 1949-51	420,000.00	408,524.76†
First Acceptance Corp., Subordinated Note, 5%, 1956	500,000.00	500,000.00†
First Acceptance Corp., Subordinated Note, 4½%, 1957	500,000.00	500,000.00†
General Finance Corp., Deb., 4%, 1960	55,000.00	52,250.00
Marshall-Wells Co., Cum. Income Deb. (Reg.), 7%, 1969	46,100.00	55,320.00
Northwestern Refining Co., 5%, Serial Note, 1950-52	30,000.00	26,423.89†
Seaboard Finance Co., Subordinated Note, 4%, 1951	750,000.00	750,000.00†
Standard Factors Corp., Subordinated Note, 4½%, Serial, 1953-58	500,000.00	500,000.00†
Westinghouse Electric Corp., Conv. Deb., 2.65%, 1973	500,000.00	502,500.00
Wheeling Steel Corp., 1st Mtge., S. F., Series "D," 3½%, 1967	150,000.00	144,000.00
Wrigleys Stores, Inc., Note and Loan Agreement, 4½%, 1960	500,000.00	500,000.00†
Total industrial		$ 4,284,148.65
Total domestic bonds		$15,621,798.88

INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, December 31, 1948—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
CANADIAN BONDS:		
Dominion Government and Dominion Government Guaranteed:		
Dominion of Canada, 3%, 1956/53	$ 30,000.00	$ 31,192.50
Dominion of Canada, 3%, 1957/54	450,000.00	462,937.50
Dominion of Canada, 3%, 1966/61	10,000.00	10,075.00
Dominion of Canada, 3%, 1959/58	775,000.00	792,437.50
Dominion of Canada, 3%, 1960/57	499,000.00	507,108.75
Dominion of Canada, 3%, 1959/62	1,150,000.00	1,160,062.50
Canadian National Ry. Co., Govt. G't'd., 3%, 1959	100,000.00	101,500.00
Total Dominion Government and Dominion Government Guaranteed		$ 3,065,313.75
Provincial:		
Alberta, 3½%, 1961/50	$ 1,000.00	$ 1,025.00
Alberta, 3½%, 1962/50	1,000.00	1,025.00
Alberta, 3½%, 1965/50	1,000.00	1,025.00
Alberta, 3½%, 1968/50	50,000.00	51,250.00
Alberta, 3½%, 1972/50	25,000.00	25,625.00
Alberta, 3½%, 1973/50	100,000.00	102,500.00
Alberta, 3½%, 1974/50	2,000.00	2,050.00
Alberta, 3½%, 1975/50	7,000.00	7,175.00
Alberta, 3½%, 1976/50	50,000.00	51,250.00
Alberta, 3½%, 1977/50	62,000.00	63,550.00
Alberta, 3½%, 1978/50	15,000.00	15,375.00
Alberta, 3½%, 1979/50	4,000.00	4,100.00
Alberta, 3½%, 1980/50	165,000.00	169,125.00
British Columbia, G't'd., Vancouver and Districts Joint Sewerage and Drainage Board, 5%, 1959	45,000.00	57,150.00
Manitoba, 2½%, 1957-58	100,000.00	99,625.00
Manitoba, 5½%, 1958	50,000.00	58,875.00
New Brunswick, 5%, 1957	93,000.00	103,695.00
New Brunswick, 3½%, 1963	100,000.00	98,250.00
Nova Scotia, Deb., 3%, 1954/58	275,000.00	276,203.13
Nova Scotia, Deb., 3½%, 1961/63	235,000.00	236,762.50
Ontario, 4½%, 1949	100,000.00	100,125.00
Ontario, 3%, 1957/59	565,000.00	569,590.63
Ontario, G't'd., The Hydro Electric Power Commission of Ontario, 3%, 1964	500,000.00	497,500.00
Ontario, G't'd., The Hydro Electric Power Commission of Ontario, 3%, 1963/65	1,060,000.00	1,050,725.00
Prince Edward Island, 3%, 1955-56	100,000.00	100,000.00
Quebec, S. F. Deb., 3½%, 1952	50,000.00	51,437.50

[fol. 2420]

INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, December 31, 1948—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
CANADIAN BONDS — continued		
Quebec, 4%, 1952/50	$ 50,000.00	$ 51,625.00
Quebec, 3½%, 1954/51	100,000.00	102,000.00
Quebec, 4%, 1956/54	50,000.00	52,750.00
Total provincial		$ 4,001,386.76
Municipal:		
Edmonton (City of), 3%, 1949-58	$ 50,000.00	$ 50,000.00
Edmonton (City of), 3½%, 1959-63	25,000.00	25,000.00
Fort William, Ontario, Vocational School, Deb., 6%, 1962	100,000.00	123,000.00
Greater Vancouver Water District, 4%, 1950-63	204,000.00	212,992.50
Greater Vancouver Water District, Serial Deb., 2½%, 1964-67	50,000.00	45,750.00
Halifax (City of), Nova Scotia, 3½%, 1958	50,000.00	50,000.00
Ingersoll (Town of), Deb., 3½%, 1949-68	50,000.00	50,750.00
Port Alfred, Quebec, 3½%, 1954-58	36,500.00	36,226.25
Stony Plain School Division 23, 4½%, 1949-58	30,000.00	30,450.00
Toronto (City of), 3%, 1955	50,000.00	50,562.50
North York (Township of), Deb., 3½%, 1949-63	50,000.00	50,500.00
Vancouver (City of), British Columbia, 3½%, 1964-65	50,000.00	48,750.00
Total municipal		$ 778,981.25
Railroad:		
Canadian Pacific Ry. Co., Conv. Coll., 3½%, 1951	$ 50,000.00	$ 51,250.00
Public Utility and Industrial:		
Abitibi Power & Paper Co., Ltd., 1st Mtge., Series "A," 3½%, 1967	$ 50,000.00	$ 49,187.50
Bell Telephone Co. of Canada, 1st Mtge., Series "E," 3%, 1977	50,000.00	48,000.00
Bowaters Newfoundland Pulp & Paper Mills, Ltd., 1st Mtge., 3½%, 1968	50,000.00	48,250.00
British American Oil Co., Ltd., Serial Deb., 2½%, 1957-66	100,000.00	97,125.00
British Columbia Electric Co., Ltd., 1st Mtge., Series "A," 3½%, 1967	450,000.00	414,000.00
Canada Electric Co., Ltd., 1st Mtge., Series "A," S. F., 3½%, 1967	50,000.00	47,250.00
Canadian Breweries, Ltd., S. F. Deb., 3½%, 1967	325,000.00	300,625.00
Canadian Celanese, Ltd., Deb., 3%, 1962	200,000.00	196,000.00
Canadian Oil Companies, Ltd., 1st Mtge., 3½%, 1962	125,000.00	123,125.00
Canadian Western Lumber Co., Ltd., 1st Mtge., S. F. Deb., Series "A," 4%, 1962	150,000.00	150,562.50
Columbia Cellulose Co., Ltd., 1st Mtge., 4½%, 1965	250,000.00	255,000.00
Consolidated Paper Corp., Ltd., 1st Mtge., 3½%, 1967	150,000.00	152,625.00

INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, December 31, 1948—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
CANADIAN BONDS — continued		
Dominion Tar and Chemical Co., Ltd., 1st Mtge., Series "A," 3½%, 1953-57	$ 75,000.00	$ 76,500.00
Eastern Canada Savings & Loan Co., 3½%, 1958	50,000.00	49,875.00
Eastern Light & Power Co., Ltd., 1st Mtge., Coll. Trust, Series "A," 4%, 1965	25,000.00	25,250.00
Eastern Steel Products, Ltd., 1st Secured, S. F., Series "A," 4%, 1966	50,000.00	48,500.00
Eddy (E. B.) Co., 1st Mtge., S. F., Series "A," 3½%, 1966	125,000.00	122,500.00
Federal Grain Co., Ltd., 1st Mtge., Coll. Trust, 4%, 1964	50,000.00	49,250.00
Gatineau Power Co., S. F. Deb., 2½%, 1961	50,000.00	49,000.00
Great Lakes Paper Co., Ltd., 1st Mtge., S. F., 3½%, 1967	66,000.00	65,670.00
Howard Smith Paper Mills, Ltd., 3%, 1954	150,000.00	150,000.00
Imperial Tobacco Co. of Canada, Ltd., Deb., 2½%, 1954-65	60,000.00	58,200.00
Imperial Tobacco Co. of Canada, Ltd., Deb., 2½%, 1966	140,000.00	134,400.00
Industrial Acceptance Corp., Ltd., S. F. Deb., Series "A," 3½%, 1966	65,000.00	61,425.00
Industrial Acceptance Corp., Ltd., 4%, 1966	10,000.00	10,000.00
Kelowna Growers Exchange, 4%, 1955	25,000.00	25,000.00
Lake St. John Power & Paper Co., Ltd., 3½%, 1961	28,000.00	28,000.00
Lower St. Lawrence Power Co., 1st Mtge., Series "B," 3½%, 1965	100,000.00	97,000.00
Maclaren Quebec Power Co., 1st Mtge., S. F., Series "A," 3%, 1969	200,000.00	192,000.00
MacMillan (H. R.) Export Co., Ltd., 1st Mtge. and Coll. Trust, Series "A," 4%, 1965	75,000.00	76,125.00
Massey-Harris Co., Ltd., 1st Mtge., Serial, S. F., Series "A," 3%, 1968	200,000.00	190,000.00
Massey-Harris Co., Ltd., 4½%, 1963	100,000.00	100,500.00
McCormicks, Ltd., G'td. Mtge., S. F., 4%, 1952	180,975.00	182,584.75
Morgan (Henry) Properties, Ltd., 1st Mtge., S. F., Series "A," 3½%, 1967	100,000.00	98,750.00
National Light & Power Co., Ltd., 1st Mtge., S. F., Series "C," 4½%, 1961	50,000.00	51,250.00
Nova Scotia Trust Company, Deb., 3½%, 1958	50,000.00	49,875.00
Ottawa Light, Heat & Power Co., Ltd., Ref. Mtge. and Coll. Trust, S. F., 4%, 1957	25,000.00	25,312.50
Price Bros. & Co., Ltd., 1st Mtge., 3½%, 1966	45,000.00	44,775.00
Quebec Power Co., 1st Mtge. and Coll. Trust, S. F., Series "E," 3%, 1962	190,000.00	184,300.00
Quebec Power Co., 1st Mtge. and Coll. Trust, S. F., Series "D," 3½%, 1962	300,000.00	300,000.00
Shawinigan Water & Power Co., 1st Mtge. and Coll. Trust, S. F., Series "L," 3%, 1961	135,000.00	132,300.00
Simpsons, Ltd., Secured Term Notes, 3%, 1954-55	100,000.00	100,000.00
Steel Co. of Canada, Ltd., The, S. F. Deb., 2½%, 1967	300,000.00	282,000.00
Union Gas Co. of Canada, Ltd., 1st Mtge., 4½%, 1950	58,500.00	59,085.00
United Corp., Ltd., Series "A," 4%, 1958	200,000.00	202,000.00
United Fuel Investments, Ltd., 1st Coll. Mtge., S. F., Series "A," 4%, 1959	50,000.00	51,000.00

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INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, December 31, 1948—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
CANADIAN BONDS — continued		
United Grain Growers, Ltd., 1st Mtge., S. F., Series "C," 4%, 1963	$ 125,000.00	$ 126,875.00
Victoria Trust & Savings Co., Deb., 3½%, 1958	50,000.00	49,875.00
Total public utility and industrial		$ 5,410,927.25
Total Canadian bonds		$13,302,861.01
Total bonds		$28,924,650.89
PREFERRED STOCKS:		
DOMESTIC PREFERRED STOCKS:		
Railroad:		
Carolina, Clinchfield & Ohio Ry., 5%, G't'd	1,810	$ 189,597.50
Chesapeake & Ohio Ry. Co., 3½% Cum. Conv.	2,000	156,000.00
Delaware & Bound Brook R. R. Co., $2.00 Guaranteed Leased Line Stock	1,707	68,280.00
Virginian Railway Co., 6% Cum.	3,900	119,437.50
Total railroad		$ 533,315.00
Public Utility:		
American Gas & Electric Co., 4½% Cum.	850	$ 93,712.50
Associated Telephone Co., Ltd., 4½% Cum.	6,000	110,250.00
Atlanta Gas Light Co., 4½% Cum.	1,500	154,500.00
Birmingham Electric Co., 4.20% Cum.	610	50,020.00
California Water & Telephone Co., $1.20 Cum.	5,000	136,250.00
Central Electric & Gas Co., 4½% Cum., Series "A"	2,800	114,800.00
Central Illinois Electric & Gas Co., 4.10% Cum., Series "A"	3,355	288,530.00
Central Maine Power Co., 3½% Cum.	5,283	406,111.75
Columbus & Southern Ohio Electric Co., 4½% Cum.	250	24,687.50
Dayton Power & Light Co., 3½% Cum., Series "A"	810	74,216.25
Duquesne Light Co., 5% Cum., 1st	1,000	113,500.00
El Paso Electric Co., $4.50 Cum.	350	34,650.00
El Paso Natural Gas Co., 4.10% Cum.	1,600	151,200.00
Florida Power Corp., 4% Cum.	2,075	169,112.50
Indiana Associated Telephone Corp., $2.00 Cum.	3,750	138,750.00
Kansas Nebraska Natural Gas Co., Inc., $5.00 Cum.	2,000	200,500.00
Louisiana Power & Light Co., $6.00 Cum.	1,310	147,538.75
New England Power Co., 6% Cum.	100	12,750.00
New Orleans Public Service, Inc., 4½% Cum.	3,850	383,075.00
Northern States Power Co. (Wis.), 5% Cum.	500	57,000.00
Oklahoma Natural Gas Co., Series "A," 4½% Cum.	5,300	275,600.00
Otter Tail Power Co., $3.60 Cum.	3,088	257,544.00
Pacific Gas & Electric Co., 5½% Cum., 1st	1,900	32,187.50

INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, December 31, 1948—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
PREFERRED STOCKS — continued		
Pennsylvania Electric Co., 3.70% Cum., Series "C"	800	$ 70,600.00
Pennsylvania Telephone Corp., $2.10 Cum.	245	11,515.00
Public Service Co. of Colorado, 4½% Cum.	1,650	158,400.00
Public Service Co. of Oklahoma, 4% Cum.	4,000	349,000.00
Sierra Pacific Power Co., 6% Cum.	547	62,905.00
Southern California Edison Co., 4.32% Cum.	13,200	326,700.00
Southern California Edison Co., 4.48% Cum. Conv.	9,300	267,375.00
Southern California Edison Co., 4.56% Cum. Conv.	3,000	87,375.00
Southern California Gas Co., 6% Cum., Series "A"	2,000	68,250.00
Southern California Water Corp., 4½% Cum.	8,000	172,000.00
Southern Indiana Gas & Electric Co., 4.80% Cum.	2,000	210,000.00
Southern Union Gas Co., 4½% Cum.	5,000	427,500.00
Southwestern Public Service Co., 3.90% Cum.	2,400	200,400.00
Texas Electric Service Co., $6.00 Cum.	625	70,625.00
United Transit Co., 5% Cum. Conv.	2,000	54,000.00
Virginia Electric & Power Co., $5.00 Cum.	2,570	292,980.00
West Coast Telephone Co., $1.20 Cum.	3,700	81,400.00
Total public utility		$ 6,366,460.75
Industrial:		
American Airlines, Inc., 3½% Cum. Conv.	2,900	$ 161,675.00
American Cyanamid Co., 3½% Cum. Conv., Series "A"	2,500	250,625.00
Armstrong Cork Co., $4.00 Cum. Conv.	2,310	256,410.00
Atlantic Greyhound Corp., 4% Cum.	964	86,760.00
Atlantic Refining Co., Series "A," 4% Cum. Conv.	1,500	162,000.00
Beneficial Industrial Loan Corp., $3.25 Cum. Conv.	2,000	151,000.00
Booth Fisheries Corp., 4% Cum. Conv.	5,000	352,500.00
Bullocks, Inc., 4% Cum.	2,900	252,300.00
Burlington Mills Corp., 3½% Cum. Conv., 2nd	1,000	75,500.00
Butler Brothers, 4½% Cum.	1,730	129,750.00
Canada Dry Ginger Ale, Inc., $4.25 Cum. Conv.	2,500	259,375.00
Celanese Corp. of America, $4.75 Cum. 1st	300	30,000.00
Chicago Pneumatic Tool Co., $3.00 Cum. Conv.	1,600	82,000.00
Christiana Securities Co., 7% Cum.	391	55,815.25
Cluett Peabody & Co., Inc. 4% Cum. Conv., 2nd	2,500	193,750.00
Commercial Credit Co., 3.60% Cum. Conv.	2,000	191,000.00
Commonwealth Loan Co., 4% Cum.	2,450	214,375.00
Container Corp. of America, 4% Cum.	1,740	165,082.50
Cornell Dubilier Electric Corp., $5.25 Cum., S. F., Series "A"	905	89,595.00
Dow Chemical Co., $3.25 Cum. Conv., 2nd	3,000	312,750.00
Dresser Industries, Inc., 3½% Cum. Conv.	900	76,725.00
Dun & Bradstreet, Inc., 4½% Cum.	727	74,881.00
Edison Brothers Stores, Inc. 4½% Cum.	995	88,555.00
Elco Products Co., 4½% Cum.	1,020	96,900.00

INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, December 31, 1948—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
PREFERRED STOCKS — continued		
Firth Sterling Steel & Carbide Corp., 7% Cum.	2,731	$ 814,065.00
Frank (A. B.) Co., 5½% Cum.	2,554	234,968.00
General Cable Corp., 4% Cum., 1st	5,270	404,472.50
General Controls Co., 6% Cum.	2,000	41,500.00
General Mills, Inc., 3¾% Cum. Conv.	800	84,000.00
General Tire & Rubber Co., 3¾% 1st, Cum.	1,020	74,970.00
General Tire & Rubber Co., 3¾% Cum. Conv., 2nd	2,175	118,537.50
Golden State Co., Ltd., 4% Cum. Conv.	2,000	158,000.00
Great Atlantic & Pacific Tea Co. of America, 7% Cum., 1st	225	31,246.88
Greyhound Corp., 4½% Cum.	1,870	175,312.50
Heyden Chemical Corp., 3½%, Series "A," Cum.	1,375	108,281.25
Hollingsworth & Whitney Co., $4.60 Cum.	1,250	110,000.00
Hormel (Geo. A.) & Co., 6% Cum., Class "A"	100	10,600.00
Interchemical Corp., 4½% Cum.	2,500	220,000.00
Johns-Manville Corp., 3¾% Cum. Conv.	2,000	216,500.00
Koppers Co., Inc., 4% Cum.	5,760	615,160.00
Le Tourneau (R. G.), Inc., $4.00 Cum.	2,580	125,130.00
Liquid Carbonic Corp., 3¾% Cum. Conv.	2,300	173,650.00
Lowenstein (M.) & Sons, Inc., 4½%, Series "A," Cum.	1,975	186,637.50
Marshall Field & Co., 4½% Cum.	4,130	306,480.00
McCrory Stores, 3½% Cum. Conv.	2,600	239,200.00
McKesson & Robbins, Inc., $4.00 Cum.	5,000	461,250.00
McQuay-Norris Manufacturing Co., 4½% Cum. Conv.	100	9,800.00
Minneapolis-Honeywell Regulator Co., 3.20% Cum. Conv., Series "A"	3,000	261,750.00
Monsanto Chemical Co., $3.25 Cum. Conv., Series "A"	3,000	312,000.00
Mutual Loan Co., 6% Cum.	150	14,625.00
National Tea Co., 4½% Cum.	5,300	265,000.00
Northland Greyhound Lines, Inc., 3½% Cum.	2,040	171,360.00
Oliver Corp., 4¼% Cum. Conv.	3,500	339,500.00
Red Owl Stores, Inc., 4½% Cum. Conv., Series "A"	1,000	84,000.00
Reliance Mfg. Co., 3½% Cum. Conv.	3,805	211,308.75
Richs, Inc., 3½% Cum.	1,710	152,190.00
Robertshaw Fulton Controls Co., 4½% Cum. Conv.	7,800	198,900.00
Rome Cable Corp., 4% Cum. Conv.	1,850	36,712.50
Safeway Stores, Inc., 5% Cum.	670	74,705.00
St. Regis Paper Co., 1st, Series "A," 4.40%, Cum.	2,500	202,500.00
Seabrook Farms Co., 4½%, Cum.	4,000	320,000.00
Servel Incorporated, $4.50 Cum.	2,500	248,750.00
Smith (Alexander) & Sons Carpet Co., 3½% Cum.	1,808	151,872.00
Standard Steel Spring Co., 4% Cum. Conv.	4,500	186,750.00
Sylvania Electric Products, Inc., $4.00 Cum.	1,630	181,215.00
Thalhimer Bros., Inc., 3.65% Cum.	2,400	205,200.00
Thrifty Drug Stores Co., Inc., 4½% Cum.	4,380	350,400.00
Toledo Blade Co., 4½% Cum.	2,250	213,750.00
Twentieth Century-Fox Film Corp., $4.50 Cum., Prior	1,100	108,350.00

INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, December 31, 1948—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
PREFERRED STOCKS — continued		
Twin Coach Co., $1.50 Cum. Conv.	5,000	$ 73,750.00
United Aircraft Corporation, 5% Cum. Conv.	1,700	181,900.00
U. S. Hoffman Machinery Corp., 4½% Cum.	8,700	474,150.00
United Wall Paper, Inc., 4% Cum. Conv.	2,900	63,800.00
Universal Pictures Co., Inc., 4¼% Cum.	2,390	103,367.50
West Virginia Pulp & Paper Co., 4½% Cum.	90	9,652.50
[illegible]		$13,465,188.13
Total domestic preferred stocks		$20,364,963.88
Canadian Preferred Stocks:		
British Columbia Electric Co., Ltd., 4% Cum.	710	$ 63,900.00
Canadian Car & Foundry Co., Ltd., $1.00, Non-Cum. Conv., Class "A"	2,500	40,625.00
Dominion Fabrics, Ltd., 6% Cum., 1st	500	28,000.00
Dominion Tar & Chemical Co., Ltd., $1.00 Cum.	2,025	43,284.38
Shawinigan Water & Power Co., 4% Cum. "A"	850	40,587.50
Western Grocers, Ltd., $1.40 Cum.	600	18,900.00
Weston (George), Ltd., 4½% Cum.	400	39,750.00
Total Canadian preferred stocks		$ 273,046.88
Total preferred stocks		$20,638,010.76
Common Stocks—Domestic:		
Investors Mutual, Inc.	10,000	$ 112,173.12
Investors Selective Fund, Inc.	10,000	94,446.95
Investors Stock Fund, Inc.	10,000	118,684.96
Total common stocks—domestic		$ 325,305.03
Total investments in securities		$49,887,975.68

* See note 5 of "Notes to Financial Statements" for basis of valuation.

† At fair value in the opinion of the Board of Directors of the Company—not currently quoted

INVESTORS DIVERSIFIED SERVICES, INC.

Supplementary Information for the Year Ended December 31, 1948

PURCHASES AND SALES OF SECURITIES

During the year ended December 31, 1948, purchases of securities, other than United States Government bonds, aggregated $24,753,395.92. The aggregate cost of securities sold, other than United States Government bonds, was $31,378,226.85.

COMPENSATION PAID TO OFFICERS AND DIRECTORS

During the year ended December 31, 1948, the Company had six directors, three of whom were executive officers and who received no additional compensation for acting as directors. One director, who was not an executive officer, received no compensation for his services. Aggregate compensation paid to the other two directors during the year ended December 31, 1948, was $4,999.92. No special compensation was paid to directors.

Compensation to executive officers (excluding assistants to vice presidents, to secretary, and to treasurer) aggregated $239,466.14 for the periods during which they held office during the year ended December 31, 1948.

(Copies of this Report are being made available to banks, financial agencies and institutions, for their files for ready reference. This material, under no circumstances, is to be used in the solicitation of applications for investment certificates.)

IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT NO. K-169

ALLEGHANY CORPORATION

Annual Report for 1950

[fol. 2428]

ALLEGHANY CORPORATION

100 West Tenth Street · Wilmington 99, Delaware

Directors

J. J. ANZALONE
FRANK B. BATEMAN
O. HENRY BRIGGS
WALTER W. FOSKETT
ALLAN P. KIRBY
HERMAN R. NEFF
R. W. PURCELL
ANDREW VAN PELT
RADCLIFFE SWINNERTON
ROBERT R. YOUNG

Executive Committee

ROBERT R. YOUNG, *Chairman*
ALLAN P. KIRBY
J. J. ANZALONE
R. W. PURCELL
HERMAN R. NEFF

Officers

ROBERT R. YOUNG . . . . *Chairman of the Board of Directors*
ALLAN P. KIRBY . . . . . *President*
R. W. PURCELL . . . . . *Vice Chairman and Vice President*
J. J. ANZALONE . . . . . *Vice President and Secretary*
C. L. PECKHAM . . *Treasurer, Assistant Secretary and Comptroller*

Transfer Agents

J. P. Morgan & Co., Inc., New York
Central National Bank of Cleveland, Cleveland

Registrars

$2.50 Prior Preferred Stock – Manufacturers Trust Company, New York
Cleveland Trust Company, Cleveland

$5.50 Preferred Stock, Series A – The First National Bank, New York
Cleveland Trust Company, Cleveland

Common Stock – Guaranty Trust Company, New York
Cleveland Trust Company, Cleveland

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Annual Report

FOR THE YEAR ENDED DECEMBER 31

1950

ALLEGHANY CORPORATION

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Asset position of series A preferred stock . . . . . page 4
Asset position of common stock . . . . . page 5
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TABLES

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Transactions during the year 1950 . . . . . page 16
Transactions 1950 year-end to March 1, 1951 . . . . . inside back cover
Schedule of securities in joint ventures . . . . . inside back cover

The Annual Meeting of the stockholders will be held on May 2, 1951. A notice of the meeting, together with a form of proxy and a proxy statement, will be mailed to stockholders on or about April 2, 1951, at which time proxies will be requested by the management.

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[fol. 2430]

1950

KEY FACTS and FIGURES

NET INCOME excluding security transactions totaled $1,244,407 versus $1,869,557 in 1949.

EXCLUDING loss taken on sale of 55,200 Missouri Pacific common shares, security transactions produced a net gain of $2,175,997. The loss taken on the sale of Missouri Pacific common shares was $4,899,366.

DIVIDEND PAYMENTS were inaugurated on the Prior Preferred stock with a distribution of $2.50 per share.

YEAR-END MARKET value of investments exclusive of Missouri Pacific common exceeded their book value by $5,723,856.

DECEMBER 31 net asset value per Prior Preferred share was $1,061.13 versus $885.64 a year before.

DECEMBER 31 net asset value per Series A Preferred share was $142.25 versus $97.67 a year before.

THE YEAR-END balance sheet showed $8,562,028 Corporate Surplus contrasting with a $2,360,630 *deficit* in Surplus Account at the close of 1949.

YEAR-END HOLDINGS of cash and United States Government securities plus investments in which Alleghany is guaranteed against loss exceeded the sum of all the Corporation's outstanding liabilities by $2,137,524.

DURING the year the Corporation made further reacquisitions of shares of its preferred stocks.

DIVERSIFICATION of investment interests was carried somewhat further.

THE CORPORATION again spearheaded a vigorous movement to upset a "dust bowl" reorganization plan for the Missouri Pacific System and prevent the wiping out of Alleghany's investment in that situation.

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March 15, 1951

To Alleghany Corporation Stockholders:

Last year was something of a milestone in the history of Alleghany Corporation. It marked elimination of the final remnant of the capital deficit inherited by the present management in 1937—and a change from deficit to surplus. Holders of Alleghany's Prior Preferred stock received their first dividend payment. Both the Prior Preferred and Series A Preferred reached new highs in net asset value per share. While the Common stock remained "under water," notable progress was made toward attaining asset value for that issue.

Earnings and Security Transactions

Net income exclusive of profit and loss on security transactions amounted to $1,244,407 as compared with $1,869,557 in 1949. The decrease was due chiefly to the reduction in assets caused by the Corporation's program of reacquiring shares of its two classes of preferred stocks and to reduction in dividend income from Chesapeake & Ohio and Pittston. It will be recalled that the year 1949 was one of unprecedented coal strikes and that the mines worked only 170 days. The disastrous influence of those strikes in 1949 was not reflected in the dividend payments of C&O and Pittston until 1950.

Excluding loss of $4,899,366 on sale of 55,200 shares of Missouri Pacific common (purchased in 1929), security transactions produced a net gain of $2,175,997. This compared with $5,583,015 net loss on security transactions in 1949.

One of Alleghany's most important security operations of 1950 was the purchase and subsequent sale of 24% of the common stock of Pacific Power & Light Company. The stock was bought in February and sold in October. The operation produced a net profit of $1,492,519. In addition, Alleghany received $237,325 in Pacific Power & Light dividends while a stockholder.

Itemization of Alleghany's 1950 security transactions is provided in the tables appended hereto. For your added information, transactions between December 31, 1950, and March 1, 1951, are also itemized there.

Reacquisitions of Alleghany Preferreds

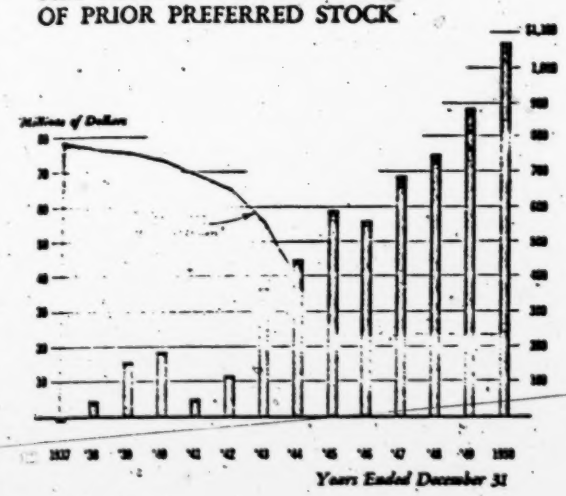
Last year the Corporation reacquired 1,430 shares of its own Prior Preferred stock at an average cost of $81.38 per share, and 58,966 shares of its Series A Preferred stock at an average cost of $82.96 per share. Following is a summary of reacquisitions from September 9, 1946, (when the program started) to March 1, 1951:

	Shares Reacquired	Per Cent of 9-9-46 Total	Paid for Reacquired Shares*	Average Paid per Share*
Prior Preferred	71,291	66.62%	$5,015,722	$70.35
Series A Preferred	422,995	63.36%	$21,866,965	$51.69

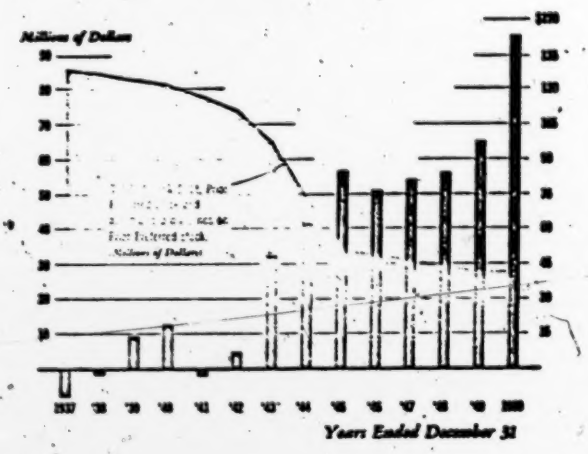
*On basis of cash repurchase prices and market values of portfolio securities unchanged.

[fol. 2432]

NET ASSET VALUE PER SHARE OF PRIOR PREFERRED STOCK



NET ASSET VALUE PER SHARE OF SERIES A PREFERRED STOCK



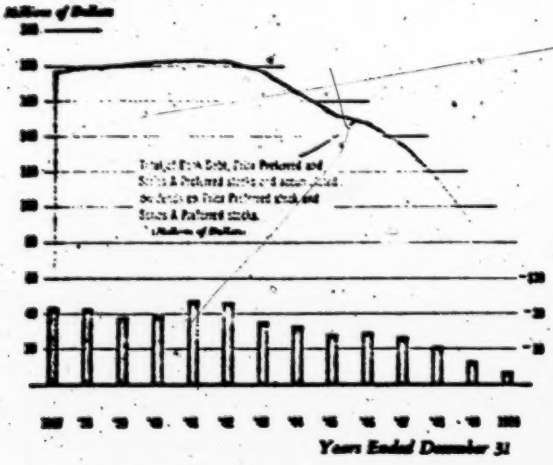
Through these reacquisitions holders of all classes of the remaining stock of the Corporation have been greatly benefited. Had the program not been carried out, per-share asset coverage for the Prior Preferred stock as of March 1, 1951, would have amounted to only $610.80 instead of $1,076.79, while per-share asset coverage for the Series A Preferred stock would have been only $83.41 instead of $144.48. Moreover, $48,471,928 of dividend arrears have been eliminated through the reacquisitions. The program has correspondingly benefited Alleghany's Surplus Account. Without it the Corporation would have had a capital deficit of $7,007,559 as of March 1, 1951, instead of a surplus of $9,122,16[illegible].

Dividends

As long as the Corporation had a capital deficit Alleghany could not legally pay dividends. With that barrier removed the Board of Directors was prompt to initiate payments against Prior Preferred arrears. An initial dividend of $2.50 per share was declared November 2 and paid December 20 to stockholders of record December 1.

Accompanying the dividend checks went a notice explaining certain tax aspects of Alleghany's sales of 55,200 Missouri Pacific common shares in the course of the year. The stock was sold for $43,407; the cost of the stock to the Corporation was $4,921,110. On the assumption that such sale produced a recognized loss under the Internal Revenue Code, it is the opinion of the Corporation's counsel that the 1950 distribution of $2.50 per share to holders of the Prior Preferred stock constituted a return of capital, taxable to the holder only if it exceeded the cost basis of his stock —and that, where the cost basis is larger than $2.50 per share, such cost basis should be reduced by that amount.

DEFICIT IN NET ASSET VALUE PER SHARE OF COMMON STOCK



Investments of the Corporation

There was no essential alteration of Alleghany's investment policy during the year. Diversification was extended somewhat, chiefly through participation in Joint Ventures on a conservative basis. These Joint Ventures are summarized in the accompanying tables and in the Notes to Financial Statements. They involve a total of some $3,503,000 invested largely in public utility and oil stocks. Under the agreements, Alleghany shares in any profits and income, is guaranteed a minimum return of 5% on its investment and is indemnified and saved harmless from any loss.

Since the close of the year Alleghany's holdings of Chesapeake & Ohio common have been reduced to 100,754 shares. Separate discussions of Chesapeake & Ohio, Pittston, Investors Diversified Services, and Missouri Pacific follow:

The Chesapeake and Ohio Railway Company

Last year C&O earned $33,947,092 available for dividends on its preferred and common stocks. After deducting preferred dividends of $686,022, this was equal to $4.25 a share on the common stock. In the strike-torn year of 1949, C&O earned only $1.36 a share on its common stock; that was a year in which the coal mines worked intermittently for a total of only 170 days, the most difficult year in C&O's history from an operating standpoint. The good earnings of 1950 were almost $4 million more than the average annual C&O earnings during the fifteen years 1936-1950.

In 1950 capital expenditures for road and equipment amounted to $49 million, bringing the total post-World War II improvement outlays to $260 million. C&O enters the present new emergency and new inflation with this important betterment program behind it. Aggregate capital expenditures during the last fifteen years have exceeded $440 million. Meanwhile funded debt (including Pere Marquette bonds) was reduced by $6 million, and—with allowance for $15 million of preference stock retired in 1943—the total reduction in securities senior to common stock was $21 million. While equipment obligations were up $56 million for the period, the cost of the equipment purchased during the fifteen years was $260 million. At the 1950 year-end C&O had cash and Government securities totaling $63,311,180.

Because of reduction in the number of shares held by Alleghany and the reduced dividend per share, your corporation received in dividends on its C&O investment in 1950 only $301,131 as compared with $1,120,399.50 received in 1949.

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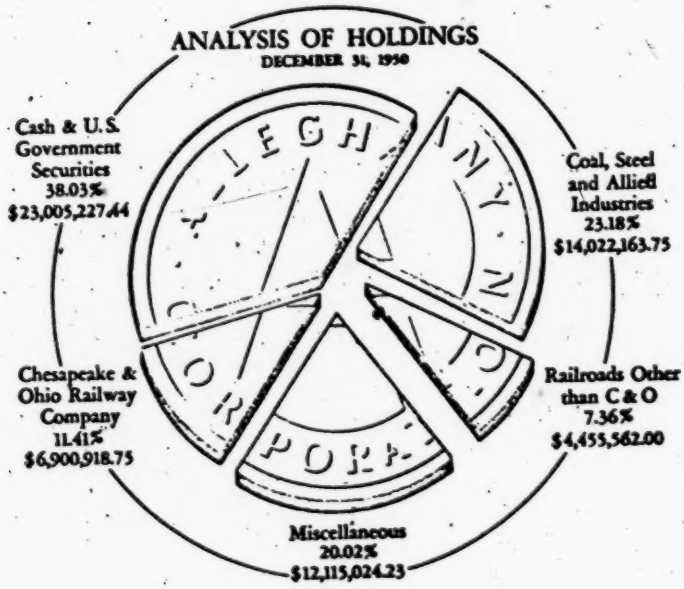
The Pittston Company

Alleghany received $223,164.50 in dividends from Pittston Company last year, as compared with $369,207.50 in 1949. Pittston paid 75 cents a share on its stock in 1950 versus $1.25 a share in 1949. The lower 1950 distribution was a delayed reflection of the paralyzing mine-labor strife of the year before.

Pittston's earnings rose in 1950, consolidated net income approximating $1,885,000 (estimated at $3.10 a share) as compared with $1,366,947.50 ($2.25 a share) in 1949. The improvement was retarded by unsettled prices for coal but tended to gain momentum in later months.

Continued progress has been made in natural gas development on acreage owned by the subsidiary Clinchfield Coal Corporation. Eight gas wells were brought in during 1950, and at the end of the year Clinchfield had 11 wells (all of them capped) with daily open flow estimated at 18,300,000 cubic feet of gas. An additional well was brought in on February 10, 1951, as a result of which the total daily open flow was estimated to have risen to more than 25 million cubic feet. Extensive drilling is scheduled for the current year.



Investors Diversified Services, Inc.

IDS has just completed an outstanding year. Swelled by several non-recurring items, consolidated net income—which includes undistributed earnings of subsidiaries—amounted to approximately $7,200,000, compared with $1,365,485 in 1949. A substantial portion of these earnings has been appropriated to increase the reserve for maturing face amount certificates and to provide a general contingency reserve. Due to cash requirements of maturing certificates and other restrictive factors in the situation, Alleghany does not expect a return on its investment in the near future. However, IDS's near-future profits are expected to continue favorable — although unlikely to duplicate the 1950 level.

Stockholders interested in securing copies of the 1950 Annual Report of IDS may do so by writing directly to that company, 200 Roanoke Building, Minneapolis 2, Minnesota. The IDS management will be glad to comply with requests as soon as the report is available.

Investors Diversified Services, Inc., and its principal subsidiary, Investors Syndicate of America, Inc., have outstanding various types of savings certificates, sold on an installment basis. IDS itself discontinued issuance of such contracts in 1940 and

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that phase of the business is now being conducted by Investors Syndicate of America, Inc. IDS maintains its own sales staff throughout the United States and distributes the savings certificates of its subsidiary and, by contract, acts as its investment manager. In addition, IDS distributes the shares and manages the portfolios of the following affiliated open-end investment trusts: Investors Mutual, Inc.; Investors Selective Fund, Inc., and Investors Stock Fund, Inc.

Through a wholly-owned subsidiary, Investors Syndicate of Canada, Ltd., and its affiliated open-end investment trust, Investors Mutual of Canada, Ltd., similar operations are conducted throughout the Dominion of Canada.

Alleghany owns 107,539.5 shares, or 93.5% of the outstanding voting stock of IDS. This holding comprises 37% of all IDS stock (voting and non-voting combined).

Missouri Pacific Railroad Company

As of December 31, 1950, Alleghany owned 444,000 shares of Missouri Pacific common stock acquired in 1929 by the Van Sweringen regime. The railroad went into bankruptcy March 31, 1933.

A third unfair and confiscatory ICC and insurance company-sponsored plan for reorganization of the Missouri Pacific System on a basis which would benefit no one but the tax collector, at the expense of the system's security holders, and which would wipe out the entire equity of Missouri Pacific common, was approved by Federal Judge George H. Moore on July 29, 1950. Alleghany has continued its vigorous opposition to these schemes on all fronts: before the courts and elsewhere, notably in balloting on the plan during the period from December 1, 1950 to January 15, 1951.

The results of the balloting should be known shortly. Meantime, Alleghany is preparing for appearance before the Circuit Court as an appellant (along with others) from Judge Moore's approval of the plan. March 8 was the deadline for filing of briefs. The hearing is scheduled for the May term of the court.

In January of the current year Alleghany and associates offered to advance $20,000,000 to pay off the "inter-company debt" of the New Orleans, Texas & Mexico Railway to the Missouri Pacific, which would have meant an entirely new approach to the treatment of Missouri Pacific security holders. The offer was rejected by Guy A. Thompson, acting in his dual and conflicting position as Trustee for both the NOT&M and the Missouri Pacific. Further steps to protect the trust estate are under consideration.

In place of the ICC-insurance company plan Alleghany urges adoption of a Mahaffie Act Plan for the Missouri Pacific Railroad Company which would quickly restore the great and prosperous Missouri Pacific System to its owners.

Your management appreciates your continued support and cooperation.

By order of the Board of Directors.

Robert R. Young — CHAIRMAN

Allan P. Kirby — PRESIDENT

ALLEGHANY

BALANCE SHEET A

Assets

Investments at indicated market quotations (Note 2):		
Securities of corporations other than Missouri Pacific Railroad Company (Note 3) (cost $26,053,614.89):		
Pledged	$21,932,077.50	
Unpledged	9,949,538.00	$31,881,615.50
U. S. Government obligations (face amount plus unamortized premium, $21,688,248.28), pledged		21,584,104.38
Missouri Pacific Railroad Company common stock (Note 4) (cost $35,290,741.35, less reserve $33,290,741.35), unpledged		2,109,000.00
		55,574,719.88
Investment in joint ventures, at cost (Note 5) ($1,303,051.44 pledged):		
50% ownership of securities (indicated market quotations, $1,586,730.50) (cost and 5% income guaranteed)	1,751,526.61	
Notes receivable from other participant, secured by pledge of 50% of securities (principal and 5% interest guaranteed)	1,751,526.62	3,503,053.23
		59,077,773.11
Cash on deposit and on hand (including $111,635.54 deposit for purchase of securities)		1,420,148.25
Cash collateral under bank loan agreements		974.81
Notes receivable		1,197,259.95
Dividends receivable, interest income accrued and sundry accounts receivable ($462,263.44 subject to collection by pledgees and application as provided in loan agreements):		
Dividends	81,714.25	
Interest	22,288.54	
Accounts receivable	469,844.71	573,847.50
Deferred charges:		
Unamortized debt expense	2,992.73	
Others	4,518.00	7,510.73
		$62,277,514.35

21.36

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[fol. 2437]

CORPORATION

OF DECEMBER 31, 1950

Liabilities

Notes payable to banks:			
Due May 22, 1951		$ 800,000.00	
Due July 3, 1953		15,000,000.00	
Due June 1, 1956		8,200,000.00	$24,000,000.00
Accounts payable and accrued liabilities:			
Interest on notes payable to banks		153,914.63	
Provision for Federal taxes on income		108,914.07	
Others		72,900.79	335,729.49
			24,335,729.49
Capital stock and surplus (deficit):			
Capital stock:			
Prior preferred convertible, less shares held in treasury (Note 6)		357,560.00	
Cumulative 5½% preferred stock, Series A (Note 7)		24,454,400.00	
Common (Notes 6 and 8)		4,567,797.00	
		29,379,757.00	
Surplus (deficit) (Notes 9 and 10):			
Paid-in surplus	$109,093,155.51		
Earned surplus (deficit), based on indicated market quotations for investments (Notes 2, 6 and 7)	(100,531,127.65)	8,562,027.86	37,941,784.86
			$62,277,514.35

The accompanying notes to financial statements are an integral part hereof.

[fol. 2438]

ALLEGHANY CORPORATION

Statement of Income 1950

(Exclusive of Profit and Loss on Security Transactions)

Income:		
Dividends		$ 1,654,584.29
Interest earned on investments		517,139.46
Other interest and miscellaneous income		17,889.31
Total income		2,189,613.06
Expenses:		
Interest on notes payable to banks	$ 504,845.01	
Amortization of debt expense	1,894.62	
Administrative and general expenses	302,997.95	
Advances and expenses re Missouri Pacific Railroad Company reorganization (Note 4)	45,467.95	855,205.53
Income (exclusive of profit and loss on security transactions) before provision for Federal taxes on income		1,334,407.53
Provision for Federal taxes on income		90,000.00
Net income (exclusive of profit and loss on security transactions) transferred to earned surplus (deficit)		$ 1,244,407.53

Profit and Loss on Security Transactions 1950

Net profit on sales of securities (Note 4)	$ 2,006,925.64
Net gain on exchanges of investment securities for Alleghany Corporation preferred stocks	169,071.08
Net profit on security transactions transferred to earned surplus (deficit)	$ 2,175,996.72

The accompanying notes to financial statements are an integral part hereof.

ALLEGHANY CORPORATION

Statement of Surplus
1950
(Notes 9 and 10)

Paid-in surplus:		
Balance December 31, 1949		$108,144,880.58
Excess of par value over cost of 58,966 shares of cumulative 5½% preferred stock, Series A, reacquired and retired during the year		1,004,874.93
Excess of consideration received over stated value of 15 shares of prior preferred stock issued during year in exchange for interest coupons from called bonds due 1950		600.00
		109,150,355.51
Deduct $40.00 per share on 1,430 shares of prior preferred convertible stock reacquired during the year (amount credited to paid-in surplus on issuance)		57,200.00
Balance December 31, 1950		$109,093,155.51
Earned surplus (deficit) (Notes 2, 6 and 7):		
Balance December 31, 1949, per books (deficit)		$ (71,458,977.76)
Less adjustment in value of investment in Missouri Pacific Railroad Company		38,190,107.39
		(109,649,085.15)
Net income for the year (exclusive of net profit on security transactions)	$ 1,244,407.53	
Net profit on security transactions for the year	2,175,996.72	
	3,420,404.25	
Deduct dividends declared on prior preferred convertible stock—$2.50 per share	89,567.50	3,330,836.75
		(106,318,248.40)
Portion of cost in excess of $50.00 per share (amount paid-in on issuance) on 1,430 shares of prior preferred convertible stock reacquired and retired during the year		(45,735.96)
Balance December 31, 1950 per books (deficit)		(106,363,984.36)
Excess of indicated market quotations for investments over recorded costs thereof		5,832,856.71
Balance December 31, 1950, based on indicated market quotations for investments		(100,531,127.65)
Total surplus December 31, 1950, based on indicated market quotations		$ 8,562,027.86

The accompanying notes to financial statements are an integral part hereof.

Notes to Financial Statements

(1) The financial statements of Alleghany Corporation reflect the elimination of certain intercompany accounts with its inoperative subsidiary which has no other assets or liabilities.

(2) Though its investments are set forth in the financial statements at indicated market quotations as of December 31, 1950, Alleghany Corporation makes no representation as to the value of any such investments. The excess of indicated market quotations over recorded costs of the investments at March 1, 1951 (after deducting reserve for valuation adjustment of the corporation's investment in common stock of Missouri Pacific Railroad Company) aggregated approximately $6,900,000.00.

The book value (recorded cost) of the corporation's investments is stated substantially at cost (see Note 4 regarding valuation of Missouri Pacific Railroad Company common stock), determined primarily on a first-in, first-out basis. The corporation is amortizing premiums paid on its investments in fully taxable bonds. The amount of bond premiums amortized for the year ended December 31, 1950 was $13,040.62.

(3) Alleghany Corporation's control of The Chesapeake and Ohio Railway Company and its subsidiaries and affiliates, through stock ownership, was authorized and approved by the Interstate Commerce Commission in an order dated June 5, 1945, subject to the condition that Alleghany Corporation shall be considered as a carrier subject to certain provisions of the Interstate Commerce Act and shall be required to deposit, with independent voting trustees, its investments in stocks of other carriers (except its holdings in stocks of Missouri Pacific Railroad Company, now in reorganization under Section 77 of the Bankruptcy Act, as amended) and of The Pittston Company.

(4) Since March 31, 1933, the property of Missouri Pacific Railroad Company has been under the jurisdiction of the United States District Court at St. Louis, Missouri, in a proceeding for its reorganization pursuant to Section 77 of the Bankruptcy Act. The common stock of Missouri Pacific Railroad Company was suspended from dealings by the New York Stock Exchange in 1941. Alleghany Corporation's holdings of that common stock were purchased prior to 1933. During the current year a reserve was established by a charge to earned surplus (deficit) to make allowance for valuation adjustment of the corporation's investment in common stock of Missouri Pacific Railroad Company, against which has been charged the "loss" ($4,899,366.04) on sale of 55,200 shares of this stock. A purchase option has been granted, expiring July 31, 1953, wherein the grantee, subject to certain conditions, has the right to acquire 75,000 shares of the corporation's investment in this stock at seventy-five cents per share.

(5) The investment in joint ventures is pursuant to the terms and provisions of joint venture agreements whereunder securities are to be bought, owned, held, managed and sold. Assets of the ventures consist of securities, 50% of the cost of which was loaned to the second party by the corporation as evidenced by promissory notes of the former due and payable upon termination of the ventures, which notes are secured by the entire interest of the second party in the ventures and on which notes interest is payable at 5% per annum. Securities acquired and held under the respective joint venture agreements are as follows:

	Cost	Indicated Market Quotations
Joint venture agreement dated June 6, 1950 — 101,100 shares of Kirby Petroleum Company common stock	$2,022,000.00	$1,8 7,712.50
Joint venture agreement dated June 23, 1950 — common stocks of 12 public utilities and 1 industrial company	1,481,053.23	1,3 5,748.50
	$3,503,053.23	$3,1 3,461.00

The joint venture agreements terminate on May 31, 1952 and June 30, 1952, respectively, subject to extensions thereof by the corporation upon notice to the other party. These agreements provide that each of the two parties thereto are to own a 50% interest in the joint ventures, and while net gains and net losses as defined in the agreements are to be divided equally between the parties, guaranty agreements by the second party provide that Alleghany Corporation will be indemnified and saved harmless from any loss in connection with its contributions to the joint ventures. All dividends and other income received from securities owned by the ventures are to be distributed equally between the parties, but the second party has guaranteed that Alleghany Corporation will receive dividends or other income from the securities owned by the ventures in an amount equal to at least 5% per annum

Notes to Financial Statements

computed on the average contributions of the corporation in effect during each fiscal year of the ventures. Either party has the right at any time and from time to time to pledge or hypothecate any stocks or other securities, then owned by the ventures, to secure any indebtedness or other obligation which it may incur or to which it may be a party. At December 31, 1950, securities acquired at a cost of $1,303,051.44 under the joint venture agreement dated June 23, 1950, in which the corporation holds a one-half interest, were pledged, together with certain notes of the second party, as part security for Alleghany Corporation's bank loan due June 1, 1958.

(6) The corporation has authorized 150,000 shares of prior preferred convertible stock without par value, 90,186 shares of which are outstanding as of December 31 1950 at a stated value of $10.00 per share, including 54,430 shares held in the corporation's treasury which have been reacquired at an aggregate cost of $3,625,637.57. Dividends on this stock are cumulative at the rate of $2.50 per share per annum and it is redeemable on call at and entitled in voluntary and involuntary liquidation to $50.00 per share, plus accumulated unpaid dividends. The 35,756 shares outstanding with the public as of December 31, 1950 have an aggregate liquidating value, including unpaid dividend accumulations of $1,363,197.50 ($38⅛ per share), of $3,150,997.50.

Each share of prior preferred convertible stock is convertible into 10 shares of common stock and Alleghany Corporation has reserved shares of the latter for such conversion.

(7) Capital stock designated as cumulative 5½% preferred stock, Series A, 244,544 shares of which are outstanding, has a par value of $100.00 per share and is redeemable on call at $105.00 per share or in involuntary dissolution at $100.00 per share plus, in each instance, accumulated and unpaid dividends. This stock is a part of 1,500,000 shares of preferred stock authorized with a par value of $100.00 per share, issuable in series, of which 1,195,000 shares are identified as cumulative 5½% preferred stock, Series A. The 244,544 shares of Series A preferred stock outstanding with the public as of December 31, 1950 have an aggregate liquidating value in voluntary dissolution of $25,677,120.00 and in involuntary dissolution of $24,454,400.00, plus unpaid dividend accumulations of $26,451,509.33 ($108¼ per share).

(8) The authorized common stock (12,350,000 shares) has a par value of $1.00 per share and, as of December 31, 1950, 4,567,797 shares of this stock had been issued and were outstanding. Common shares reserved for conversion of the corporation's outstanding prior preferred convertible stock are referred to in Note 6 herein.

(9) The aggregate of the involuntary liquidating value of cumulative prior preferred convertible stock, cumulative 5½% preferred stock, Series A, and unpaid dividend accumulations on such stocks to December 31, 1950, exceeded the aggregate of declared, par or stated values of all issues of capital stock outstanding (other than shares held in the corporation's treasury) or reserved for issuance in exchange for bond interest coupons and the combined paid-in and earned surplus (deficit) (before giving effect to difference between cost of investments and indicated market quotations therefor) by $21,950,508.05.

In the opinion of counsel for Alleghany Corporation, there are no remedies available to security holders which could arise solely by reason of the declaration or payment of a dividend having the effect or reducing surplus to an amount less than the amount by which the aggregate preference of such preferred stocks on involuntary liquidation exceeds their aggregate declared or par values. However, the certificate of incorporation of Alleghany Corporation imposes certain restrictions upon the declaration or payment of dividends.

(10) In the "Third Supplemental Agreement" between Alleghany Corporation and the Chase National Bank, the corporation, amongst other things, covenants that it will not declare or pay any dividend (other than a dividend payable in capital stock of the corporation) or purchase, redeem or otherwise retire any shares of the capital stock of the corporation (except in exchange for other shares of its capital stock) if the aggregate amount so declared, paid, distributed and expended after July 1, 1950 would exceed the net income of the corporation arising after said date, plus the sum of $100,000.00.

Over one-half of the corporation's net income for the year (excluding profit on security transactions) has been earned subsequent to July 1, 1950; accordingly, after considering the dividend declared on prior preferred convertible stock ($2.50 per share) and cost of 900 shares of the company's 5½% preferred stock, Series A, which were acquired subsequent to July 1, 1950 at an aggregate cost of $55,676.91, approximately $500,000.00 of the corporation's net income for the year remains unaffected by the foregoing restriction, as of December 31, 1950.

PEAT, MARWICK, MITCHELL & CO.

(INCORPORATING BARROW, WADE, GUTHRIE & CO.)

HANNA BUILDING
CLEVELAND 15, OHIO

NEW YORK
ATLANTA MINNEAPOLIS
BALTIMORE NEWARK
BOSTON NEW ORLEANS
CHARLOTTE OKLAHOMA CITY
CHICAGO OMAHA
CINCINNATI PHILADELPHIA
CLEVELAND PITTSBURGH
DALLAS PORTLAND
DENVER ST. LOUIS
DETROIT SALT LAKE CITY
GREENSBORO SAN FRANCISCO
HOUSTON SAN JOSE
INDIANAPOLIS SEATTLE
KANSAS CITY TERRE HAUTE
LOS ANGELES TOLEDO
MEMPHIS WASHINGTON
MILWAUKEE WATERBURY

AFRICA
AUSTRALIA
CANADA
CONTINENTAL EUROPE
CUBA
GREAT BRITAIN
HONG KONG
INDIA
JAPAN
MEXICO
SOUTH AMERICA

To the Board of Directors,
Alleghany Corporation:

We have examined the balance sheet of Alleghany Corporation as of December 31, 1950 and the related statements of income, profit and loss on security transactions and surplus (deficit) for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying balance sheet and statements of income, profit and loss on security transactions and surplus (deficit), with notes thereto, present fairly the financial position of Alleghany Corporation at December 31, 1950 and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent, in all material respects, with that of the preceding year.

PEAT, MARWICK, MITCHELL & CO.

Cleveland, Ohio, March 1, 1951.

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[fol. 2443]

ALLEGHANY CORPORATION

Investments as of December 31, 195

	Shares or principal amount	Cost (A)	Indicated market quotations (A)
U. S. Government Obligations			
Treasury 2½% bonds, December 15, 1967/72 (pledged)	$4,000,000	$ 4,068,437.50	$ 4,087,500.00
Treasury 2½% bonds, December 15, 1972/67 (pledged)	$17,397,000	17,619,810.78	17,516,604.38
		$21,688,248.28	$21,584,104.38
Railroads			
Chesapeake and Ohio Railway Company: Common stock (pledged)	200,754 shs.	$ 7,872,459.54	$ 6,900,918.75
Kansas City Southern Railway Company: Preferred stock (voting trust certificates) (pledged)	25,592 shs. (B)	1,357,099.36	1,759,450.00
Missouri Pacific Railroad Company: Common stock—cost $35,290,741.35 less reserve 33,290,741.35	444,000 shs. (C)	2,000,000.00	2,109,000.00
New York, Chicago and St. Louis Railroad Co.: Preferred stock (voting trust certificates) (pledged)	4,317 shs. (B)	562,893.63	587,112.00
		$11,792,452.53	$11,356,480.75
Coal, Steel and Allied Industries			
Cleveland-Cliffs Iron Company: Common stock (pledged 33,184 shares)	64,554 shs.	$ 1,024,926.91	$ 1,597,711.50
Clinchfield Coal Corporation: Common stock (pledged 7,100 shares)	14,400 shs.	174,993.34	568,800.00
Interlake Steamship Company: Common stock (pledged 11,377 shares)	14,677 shs.	498,458.24	554,056.75
Pittston Company: Common stock (voting trust certificates) (pledged 224,769)	298,886 shs. (B)	5,521,676.61	9,414,909.00
Portsmouth Steel Corporation: Common stock (pledged 47,375 shares)	74,737 shs.	870,499.75	1,083,686.50
Steep Rock Iron Mines, Ltd.: Common stock	110,000 shs.	170,164.16	803,000.00
		$ 8,260,719.01	$14,022,163.75
Miscellaneous			
American Express Company: Common stock	20,550 shs.	$ 207,572.00	$ 287,700.00
American Research and Development Corporation: Common stock	2,000 shs.	50,000.00	43,000.00
Brown-Forman Distillers Corporation: 4¼% cumulative junior preferred stock	13,800 shs.	88,854.50	89,700.00
Flour Mills of America, Inc.: 5% cumulative convertible preferred stock	3,993 shs.	59,972.82	57,898.50
Hilton Hotels Corporation: Common stock (pledged)	30,000 shs.	311,250.00	420,000.00
Preferred stock	2,269 shs.	98,701.50	88,222.00
Industrial Brownhoist Corporation: Common stock	166,823 shs.	1,789,971.13	1,501,407.00
Investors Diversified Services, Inc.: Voting common stock	107,539.5 shs.	1,968,581.41	3,011,106.00
Kansas City Power and Light Company: Common stock (pledged)	50,000 shs.	1,515,824.52	1,225,000.00
Marine Midland Corporation: Common stock (pledged 115,200 shares)	131,500 shs.	1,195,389.67	1,199,937.50
Westinghouse Electric Corporation: Common stock (pledged)	20,000 shs.	710,526.00	690,000.00
		$ 8,000,443.35	$ 8,611,971.00
Investment in joint ventures (note 5 of notes to financial statements)		3,503,053.23(D)	3,503,053.23(D)
Total		$53,244,916.40	$59,077,773.11

(A) See Note 2 of Notes to Financial Statements. (B) See Note 3 of Notes to Financial Statements. (C) See Note 4 of Notes to Financial Statements. (D) Amount of Alleghany's investment.

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ALLEGHANY CORPORATION

Transactions During the Year 1950

Securities Sold*

Stocks:	Shares	Net Proceeds
American Power and Light Company common (new)	50,821	$ 1,038,123.78
Chicago, Rock Island and Pacific Railroad Company common	28	1,141.87
Drewrys Limited U. S. A., Inc. common	41,666	462,283.44
Hilton Hotels Corporation common	10,000	123,425.00
Investors Diversified Services, Inc. Class A common	61/100	10.75
Long Island Lighting Company 7% preferred c/d	600	82,706.40
Missouri Pacific Railroad Company common	55,200	43,407.02
Niagara Hudson Power Corporation common	62,800	1,054,380.60
Pacific Power and Light Company common (new)	423,255	5,406,986.19
Southern Union Gas Company preference common	108,187	2,415,357.53
Wheeling and Lake Erie Railway Company common	33,910	3,913,967.00
		$14,541,769.08

*Also exchanged the following for Alleghany Corporation preferred shares pursuant to tenders: 61,879 shares American Power and Light Company common; 4,811 shares New York, Chicago and St. Louis Railroad 6% preferred; 48,225 shares Investors Diversified Services Class A common; 318 shares Kansas City Southern Railway 4% preferred; 788 shares Long Island Lighting Company 6% preferred, and 71,812 shares North American Company common.

Securities Purchased

Stocks:	Shares	Cost
Amerex Holding Corporation common (Subsequently exchanged for 20,550 shares American Express Company common)	6,850	$ 208,967.50
American Power and Light Company common (new)	112,700	1,939,905.17
American Research and Development Corporation common	2,000	50,000.00
Brown-Forman Distillers Corporation junior preferred	13,800	88,854.50
Cleveland-Cliffs Iron Company common	32,260	606,082.71
Drewrys Limited U. S. A., Inc. common	41,666	470,017.48
Flour Mills of America, Inc. preferred	3,993	59,972.62
Hilton Hotels Corporation preferred	2,269	98,701.50
Industrial Brownhoist Corporation common	166,823	1,789,971.13
Interlake Steamship Company common	2,425	84,278.10
Investors Diversified Services, Inc. voting common	3,134	62,680.00
Kansas City Power and Light Company common	50,000	1,519,824.52
Kansas City Southern Railway Company preferred	100	6,182.15
Marine Midland Corporation common	131,500	1,195,389.67
Pacific Power and Light Company common (old)	120,900	3,914,467.10
Pittston Company common	2,000	40,400.00
Portsmouth Steel Corporation common	37,737	461,249.75
Steep Rock Iron Mines, Ltd. common	10,000	39,000.00
Westinghouse Electric Corporation common	20,000	710,526.00
		$13,546,489.90

ALLEGHANY CORPORATION

Transactions from January 1, to March 1, 1951

Securities Sold

Stocks:	Shares	Net Proceeds
American Express Company common	20,550	$ 281,843.25
Chesapeake and Ohio Railway Company common	100,000	3,582,000.00
Hilton Hotels Corporation common	30,000	449,063.69
Missouri Pacific Railroad Company common	5,000	19,700.00
New York, Chicago and St. Louis Railroad Company preferred	4,317	640,240.03
Westinghouse Electric Corporation common	20,000	710,947.58
		$5,683,794.55

Securities Purchased

Stocks	Shares	Cost
Butler Brothers common	26,100	$ 395,316.31
Cleveland-Cliffs Iron Company common	2,875	72,484.38
Curtiss-Wright Corporation Class A common	23,500	622,136.59
Flour Mills of America, Inc. preferred	100	1,555.19
Hilton Hotels Corporation preferred	719	30,996.76
Industrial Brownhoist Corporation common	14,695	152,230.14
Portsmouth Steel Corporation common	56,700	945,584.31
Stewart Warner Corporation common	2,200	37,291.99
		$2,257,595.67

Schedule of Securities held in Joint Ventures as of December 31, 1950

	Common Shares	Cost	Indicated market quotations
Stocks Unpledged:			
Kirby Petroleum Company	101,100	$2,022,000.00	$1,857,712.50
American Crystal Sugar Company	5,000	121,426.79	126,250.00
Stocks Pledged:			
Central Illinois Public Service Company	2,000	36,317.20	31,125.00
Columbia Gas System, Inc.	2,000	28,340.00	25,500.00
Consolidated Edison Company of New York, Inc.	2,500	79,707.75	75,000.00
Eastern Utilities Associates	1,000	26,000.00	25,687.50
El Paso Electric Company	2,000	73,315.09	67,250.00
Kansas Gas and Electric Company	2,000	67,582.14	61,750.00
Mountain States Power Company	1,000	33,760.12	32,125.00
New England Electric System	3,000	38,741.40	33,375.00
North American Company	24,500	501,641.05	434,875.00
Public Service Company of New Mexico (pledged 18,556 shares, unpledged 3,700)	22,256	399,041.50	342,188.00
St. Joseph Light & Power Company	1,000	26,247.59	21,125.00
Southern Indiana Gas and Electric Company	2,000	46,932.60	39,500.00
Total		$3,503,053.23	$3,173,461.00

(See Note 5 of Notes to Financial Statements)

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[fol. 2447]

IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT No. K-172

INVESTORS DIVERSIFIED SERVICES, INC.

ESTABLISHED 1894
(As Investors Syndicate)
MINNEAPOLIS 2, MINNESOTA

Semi-Annual Report to Stockholders

June 30, 1949

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[fol. 2448]

INVESTORS DIVERSIFIED SERVICES, INC.

ESTABLISHED 1894

(As Investors Syndicate)

EXECUTIVE OFFICES

Roanoke Building, Minneapolis 2, Minn.

Board of Directors

J. F. Twomy, *Chairman of the Board*

Galen Van Meter, *Vice Chairman of the Board*

J. J. Anzalone — H. J. Gould

E. E. Crabb — R. W. Purcell

Principal Officers

J. F. Twomy	*Chairman of the Board*
Galen Van Meter	*Vice Chairman of the Board*
E. E. Crabb	*President*
H. K. Bradford	*Vice President*
H. C. Carr	*Vice President*
Grady Clark	*Vice President*
D. W. Green	*Vice President*
D. F. Grunebaum	*Vice President*
E. Franklin Hatch	*Vice President*
C. D. McGuiggan	*Vice President*
C. J. Moore	*Vice President and Secretary*
J. R. Ridgway, Sr.	*Vice President*
D. E. Ryan	*Vice President*
N. B. Waag	*Vice President and Controller*
J. B. Racey	*Treasurer*
T. L. Kennaly	*Auditor*

INVESTORS DIVERS

Balance Shee

ASSETS (Notes 2 and 3)

CASH (Note 4):			
On hand and in banks		$ 4,344,698.72	
Deposited with central depositary, states and provinces		2,005,420.97	
Total cash			$ 6,350,047.69
SECURITIES (Note 5):			
Bonds at amortized cost:	Market Value		
United States Government	$ 7,054,040.20	$ 6,963,195.26	
Other	29,727,977.47	30,495,297.07	
Preferred stocks at average cost less reserve	20,282,653.88	24,130,123.75	
Common stocks at average cost	312,945.76	296,218.48	
Total securities	$57,377,617.31		61,936,834.53
MORTGAGES AND OTHER LIENS ON REAL ESTATE—principal balances, less reserves:			
First mortgages:			
Insured by Federal Housing Administration		$ 60,800,671.09	
Partially guaranteed by Veterans Administration		27,814,687.42	
Other first mortgages and first liens on real estate		84,291,979.74	
Second mortgages fully guaranteed by Veterans Administration		6,445,420.66	
Total mortgages and other liens on real estate			199,352,758.91
LOANS ON CERTIFICATES			10,747,244.84
REAL ESTATE AT DEPRECIATED COST OR LESS			394,067.26
ACCRUED INTEREST AND DIVIDENDS RECEIVABLE ON INVESTMENTS			1,429,353.05
INVESTMENTS IN CAPITAL STOCK OF SUBSIDIARY COMPANIES — at book value of underlying net assets, less minority interests (Note 8)			4,994,110.29
OTHER ASSETS:			
Receivables from subsidiary companies		$ 2,196,636.82	
Receivables from affiliated companies		399,473.35	
Due from brokers for securities sold		393,134.11	
Receivables from sundry debtors, less reserves		791,591.72	
Cash surrender value of life insurance on officers for benefit of the Company		52,323.11	
Office furniture and fixtures — at depreciated cost		477,708.27	
Inventories of supplies and other deferred charges		175,528.57	
Total other assets			4,486,395.95
TOTAL			$289,690,837.52

[fol. 2450]

FIED SERVICES, INC.

June 30, 1949

LIABILITIES (Note 2)

CERTIFICATE RESERVES (Notes 1 and 6):		
Installment certificates:		
Cash surrender values attained at dates of last completed certificate years	$233,730,826.90	
Reserve payments applicable to current certificate years	17,708,363.81	
Payments made in advance of current certificate years' requirements and accrued interest thereon	14,409,434.83	
Reserves to stabilize financing costs	5,170,507.96	
Special reserve	2,374,355.10	
Other	1,511,325.03	
Fully paid certificates	9,335,788.85	
Total certificate reserves		$284,340,601.98
OTHER LIABILITIES:		
Accounts payable:		
Due to brokers for securities purchased	$ 758,546.14	
Commissions due to sales representatives	229,524.92	
Subsidiary companies	67,836.05	
Sundry creditors	835,383.27	
Unearned interest on loans	133,314.17	
Undistributed collections from mortgagors and certificate holders	23,095.03	
Accrued taxes	94,011.07	
Accrued sales representatives' incentive pay bonus	351,297.34	
Other accrued expenses	16,412.94	
Total other liabilities		2,008,980.62
DEFERRED CREDIT—Mortgage construction loan fees		308,497.84
CAPITAL STOCK, SURPLUS, AND RESERVE FOR CONTINGENCIES:		
Capital Stock:		
Common, Class "A" (not preferred and non-voting)—$5 par—authorized, 260,000 shares; outstanding, 175,836.37 shares	$ 879,181.85	
Common—$5 par—authorized, 140,000 shares; outstanding 114,908.18 shares	574,540.90	
Total capital stock	$ 1,453,722.65	
Reserve for contingencies:		
Balance, December 31, 1948 $1,203,143.61		
Appropriated from earned surplus 480,951.82		
Balance, June 30, 1949	1,684,095.43	
Earned surplus, per accompanying statement (Notes 1, 7, and 8)	Nil	
Total capital stock, surplus, and reserve for contingencies (Notes 9 and 10)		3,137,818.08
TOTAL		$289,699,897.52

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INVESTORS DIVERSIFIED SERVICES, INC.

Statement of Net Income and Earned Surplus
For the Six Months Ended June 30, 1949

GROSS INCOME:		
Gross income from investments, mortgage operations, certificate servicing, and management services:		
Investment income:		
Interest on bonds, mortgages, and other loans	$ 5,348,421.50	
Cash dividends on stocks	505,505.08	
Mortgage operations:		
Premiums on mortgages sold:		
To subsidiary companies	89,963.79	
To others	39,449.59	
Service fees:		
On mortgages owned	13,119.78	
On mortgages serviced for subsidiary companies	231,461.21	
On mortgages serviced for others	101,353.29	
Fees on new construction loans	794,426.81	
Other mortgage income	144,573.25	
Installment certificate servicing income and interest equalization credits	302,485.07	
Investment management and collection fees from subsidiaries and affiliated companies (Note 11)	445,352.51	
Other	110,831.07	
Total gross income from investments, mortgage operations, certificate servicing, and management services		$ 8,126,942.45
Gross underwriting fees from subsidiary and affiliated companies (Note 11)		3,743,689.45
Total gross income		$ 11,870,631.90
COSTS AND EXPENSES:		
Applicable to certificates, investments, mortgage operations, and management services:		
Appropriations to installment certificate cash surrender values and reserves (Note 1)	$ 6,126,286.78	
Less net recoveries from lapses and surrenders (includes interim payment recoveries – $2,441.67)	91,805.96	
Remainder	$ 6,034,480.82	
Interest on advance payments, on miscellaneous certificates and on additional credits	385,123.43	
Mortgage branch office and agency expenses–per accompanying statement	1,015,509.49	
Portion of sales agency fees and expenses regarded as being applicable to installment contract collection expense	128,927.83	
General and administrative expenses–portion–per accompanying statement	1,156,206.71	
Total costs and expenses applicable to certificates, investments, mortgage operations, and management services – forward		$ 8,718,250.28

[fol. 2452]

INVESTORS DIVERSIFIED SERVICES, INC.

Statement of Net Income and Earned Surplus For the Six Months Ended June 30, 1949 (Cont.)

COSTS AND EXPENSES (CONT.) – forward		$ 8,718,250.28
Underwriting expenses:		
Commissions and incentive pay bonuses to sales representatives	$ 2,496,399.58	
Collection fees and other allowances to sales agencies – portion regarded as applicable to selling and promotional expense	110,932.85	
Advertising and promotional expense	91,124.44	
Other direct costs and expenses	104,200.57	
General and administrative expenses – portion – per accompanying statement	306,871.17	
Total underwriting expenses		3,109,528.59
Total costs and expenses		$11,827,778.87
INCOME (LOSS*):		
From investments, mortgage operations, certificate servicing, and management services, less costs and expenses applicable thereto	$ 591,307.83*	
From underwriting fees less expenses applicable thereto	634,160.86	
Total		$ 42,853.03
Income credits (charges*) – net		28.78*
INCOME BEFORE LOSS ON INVESTMENT TRANSACTIONS		$ 42,824.25
PROFIT (LOSS*) ON INVESTMENT TRANSACTIONS:		
Realized profit on investment transactions:		
Securities (bonds, first-in, first-out basis; stocks, average cost basis)	$ 47,323.45	
Real estate (depreciated cost basis)	869.58	
Realized profit on investment transactions	$ 48,193.03	
Less provision for possible future losses (credit for reserves applied to reduce losses#):		
Securities	$ 159,914.74	
Real estate	310.83#	
Net provision	$ 159,603.91	
Profit (loss*) on investment transactions – net		111,410.88*
INCOME (LOSS*) BEFORE PROVISION FOR INCOME TAXES		$ 68,586.57*
PROVISION FOR INCOME TAXES (Note 12)		10,500.00
NET INCOME (LOSS*) FOR THE PERIOD (Notes 1 and 11)		$ 79,086.57*
PROPORTIONATE SHARE OF EARNINGS OF SUBSIDIARY COMPANIES FOR THE PERIOD		560,038.39
TOTAL		$ 480,951.82
EARNED SURPLUS AT BEGINNING OF THE PERIOD		Nil
GROSS SURPLUS		$ 480,951.82
Less appropriation for reserve for contingencies		480,951.82
EARNED SURPLUS AT END OF THE PERIOD (Notes 1, 7, and 8)		Nil

INVESTORS DIVERSIFIED SERVICES, INC.

General and Administrative Expenses For the Six Months Ended June 30, 1949

Salaries	$ 1,073,989.20
Attorneys' fees and expenses	59,563.63
Traveling expenses	74,083.16
Taxes and registration fees (other than taxes on income)	61,213.39
Rents	61,544.73
Telephone, telegraph, postage, and express	64,330.01
Depositary fees	30,000.00
Accounting, tax service, state examination fees and expenses, and actuarial survey	51,276.74
Printing and stationery	36,509.43
Provision for depreciation of office furniture and fixtures	31,996.77
Directors' fees	1,666.64
General office expenses	72,748.94
Other expenses	88,168.94
Total	$ 1,707,091.58
Less amounts charged to subsidiary companies	244,011.70
Remainder	$ 1,463,079.88

NOTE – General and administrative expenses, after deduction of charges to subsidiary companies for use of facilities and personnel, were distributed as follows: To costs and expenses of servicing certificates, investments, mortgage operations, and management agreements – $1,156,208.71; to underwriting expenses–$306,871.17. The distribution of the general and administrative expenses as between the two sections of the income statement is designed to follow the activities of the Company as set forth in those sections.

Mortgage Branch Office and Agency Expenses for the Six Months Ended June 30, 1949

Commissions and premiums on new loans:	
To subsidiary companies	$ 61,162.33
To others	32,878.02
Salaries	287,479.97
Service fees:	
To subsidiary companies	67,949.91
To others	138,119.70
Rent	28,555.07
Telephone, telegraph, postage, and express	29,619.36
Traveling and automobile expenses	20,621.27
FNMA commitment fees	265,725.71
Other expenses	83,398.15
Total	$ 1,015,509.49

[fol. 2454]

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, June 30, 1949

1. INSTALLMENT CERTIFICATE RESERVES:

(A) The Company is not subject to the reserve standards of the Investment Company Act of 1940, nor is it subject to any rules of the Securities and Exchange Commission governing the form and content of the financial statements or the accounting policies.

The Company does not follow the generally accepted accounting principle of accruing certificate reserves as such certificates progress during the certificate year, by charges against income, but instead the Company has followed the practice of deferring the accrual of such certificate reserve until dates of completion of certificate years, which dates, for the much greater part, do not coincide with the end of the Company's fiscal year.

Based on the Company's own reserve program, the rates at which the installment certificate reserves are improved at the end of certificate years differ with each series of certificates outstanding, and generally from year to year within each series. Had such reserves been accrued in accordance with generally accepted accounting principles, the total certificate reserves would have been increased and capital and surplus decreased at June 30, 1949, by $4,097,591.68. This would have produced an accounting deficit in capital and surplus at June 30, 1949, of $959,773.60 (on basis of carrying investments at cost). On such basis, the increased costs of accumulating certificate reserves would have increased the net loss by approximately $58,600 for the six months ended June 30, 1949.

(B) The Company engaged an independent firm of actuaries, Joseph Froggatt & Co., Inc., of New York City, to make an analysis of the Company's installment certificates outstanding as to duration, and experience as to lapses, stretch-outs and surrenders thereon. They also made a study of the Company's earnings during the years 1940 through 1948 inclusive, which showed that the average net earnings (exclusive of losses from distribution of securities for affiliated companies, net earnings of wholly-owned subsidiaries, and profits and losses from sale of portfolio securities) was 4.535% on the Company's total assets. A comparison between the reserves computed by the actuaries on this 4.535% basis, the reserves actually maintained by the Company, and the reserves that would have been provided on the basis of theoretical rate of improvement of 3½% (after allowances for unrealized benefits from delinquent payments and surrenders) is as follows:

(000 omitted)

	Face Amount of Installment Certificates Outstanding	Reserves Per Actuaries' Computation*	Applicable Installment Certificate Reserves Maintained by Company	Reserves Computed on Theoretical 3½% Basis
December 31:				
1943	$648,149	$163,277	$160,477	$190,302
1944	593,584	183,529	176,358	203,978
1945	557,231	202,372	196,157	221,854
1946	530,202	222,883	217,163	241,050
1947	505,754	243,868	238,442	260,414
1948	476,114	258,676	254,054	273,204

*Based on 4.535% rate.

Calculation of reserves by independent actuaries and on a theoretical 3½% basis was not made at June 30, 1949. Such calculation will be made at December 31, 1949.

The Company has developed sources of income other than its pure investment income from which it expects to receive additional net earnings. Such other sources of income include that realized from management and underwriting fees received from affiliated and subsidiary companies.

The Company's obligations for cash surrender values are specifically provided for in the exact terms of the certificates, and at June 30, 1949, were considerably less than the amount of certificate reserves maintained by the Company.

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, June 30, 1949 (Cont.)

2. Canadian Assets and Liabilities

The book value of net assets employed in Canada at June 30, 1949, aggregated $1,111,250.45 ($24,813,008.53 in assets less $23,701,758.08 in liabilities), after conversion into United States dollars at the then "official" rate of exchange of par.

Canadian assets are realizable in United States currency only by permit from the Canadian Exchange Control Board.

3. Deposits of Assets

Certain deposits of assets are maintained by the Company pursuant to requirements of various states and provinces, and a central deposit is maintained with the Treasurer of the State of Minnesota pursuant to Chapter 59, Minnesota Statutes, 1945, as amended, with respect to its liabilities, as defined in such Act, under certificates in the United States to the extent that such liabilities are not covered by deposits maintained with other states. As of June 30, 1949, the following assets were so deposited:

	Total	Central Depositary	Other States and Provinces
Cash	$ 2,005,420.97	$ 720,321.19	$ 1,285,099.78
Securities	60,891,784.81	29,468,024.34	31,423,760.47
Mortgages on real estate	195,192,691.77	72,315,696.38	122,877,055.39
Receivable from brokers for securities sold but not delivered	393,134.11	249,864.11	143,270.00
Total	$258,483,031.66	$102,753,846.02	$155,729,185.64

The foregoing amounts represent the book values of securities, exclusive of accrued interest and dividends receivable, and principal amounts of mortgages and other liens on real estate. The total deposit requirements at June 30, 1949 aggregated $255,377,485.36.

4. Cash

At June 30, 1949, the Company held cash in trust accounts in the aggregate amount of $3,360,635.06, representing funds collected from mortgagors for future payments of taxes and insurance, and held agency collections for others in the amount of $516,598.91. Drafts issued by the Company which had not been presented for payment at that date aggregated $792,211.85. These amounts, aggregating $4,669,445.82, have been deducted from the cash balances and from the contra liability accounts.

5. Securities

The market values of listed and active securities at June 30, 1949, are based upon closing published market quotations at that date. The market values of unlisted and inactive securities are based upon the mean between quoted bid and asked prices, except that, in the absence of available quotations, fifteen issues were priced at their book value of $6,461,108.36, which in the opinion of the Board of Directors was equivalent to fair market value.

The Company does not adjust the carrying value of individual securities to market except in instances where the securities are in default or are not fully income producing. All securities owned at June 30, 1949 were fully income producing, and none were in default, except for one issue of preferred stock. This stock is carried at market value in the accompanying statements.

The cost of securities (less reserve) owned at June 30, 1949 exceeded the market value thereof in the amount of $4,559,217.22, an increase in the excess of book value over market value of $212,471.90 from December 31, 1948.

6. Asset Maintenance Requirements

Under conditions of its certificates, the Company is required to maintain qualified

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INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, June 30, 1949 (Cont.)

assets on designated liabilities thereunder, less loans thereon, in ratios ranging from 100% to 110%. Such designated liabilities consist of the cash values as set forth in the various certificates, exclusive of Paid Up certificates and exclusive of advance payments on Series "D" and "F" installment certificates, which in the opinion of legal counsel for the Company are not designated as liabilities subject to such asset ratio maintenance provisions.

In general, qualified assets required to be maintained shall consist of cash, government bonds, obligations issued or guaranteed in whole or in part by the United States or Canadian governments or by government-chartered institutions or agencies, first mortgages and first deeds of trust on improved real estate, and/or in assets of the kind which life insurance companies are permitted by the laws of the State of New York to hold or acquire. At June 30, 1949, the Company was required to maintain qualified assets in the amount of $257,605,421.79 (exclusive of certificate loans), and the Company had qualified assets at that date in excess of such amount.

7. Dividend Restrictions

According to the terms of the Series G certificates no dividends shall be distributed to stockholders of the Company in any calendar year unless, not later than December 31, of the second preceding year, the Board of Directors shall have determined upon a credit to each Series G certificate which shall attain a new optional settlement value during such calendar year in an amount equal to at least one-half of one per cent of such new optional settlement value. The Board of Directors has not determined upon additional credits for Series G certificates attaining new optional settlement values subsequent to December 31, 1943, and therefore, the Company is presently restricted from paying dividends to its stockholders. Further, under sub-section (h) of Section 28 of the Federal Investment Company Act of 1940, the Company may be restricted from paying dividends to its stockholders.

8. Investments in Subsidiaries

Investments in subsidiary companies are recorded on the basis of the Company's equity in the book values of the subsidiaries' net assets. The book value of securities held by subsidiaries at June 30, 1949, was $2,366,848.25 in excess of market value at that date.

Credits to earned surplus for undistributed earnings of subsidiary companies aggregated $3,344,463.70 at June 30, 1949. The earned surplus of one of the Company's subsidiaries is restricted as to dividend payments during 1949, by reason of declaration of additional credits for that year at a rate lower than the minimum which could be declared without such restriction. Credits to earned surplus for undistributed earnings of that subsidiary aggregated $1,988,311.19 at June 30, 1949.

9. Contingent Mortgage Repurchase Agreement

The Company has endorsed, or agreed to repurchase under certain conditions, notes secured by first mortgages and first deeds of trust which it sells to its 96.8% owned subsidiary, Investors Syndicate Title & Guaranty Company, New York, or which said subsidiary may acquire pursuant to its trust agreements under the terms of certain series of such subsidiary's certificates sold prior to 1942. The notes so endorsed or which on June 30, 1949, were subject to such repurchase agreements aggregated $19,845,595.89, including $11,842,047.18 of FHA insured mortgages.

10. Contingent Liability Under Securities Act of 1933

The Company acts as principal underwriter for Investors Mutual, Inc. and Investors Stock Fund, Inc., open-end diversified management investment companies, and Investors Syndicate of America, Inc., a face amount certificate company. In making sales of shares of stock and face amount certificates of those companies during the period from April 28 to May 23, 1949, inclusive, a prospectus was used which did not contain information as to the acquisition of the controlling shares of stock of Investors Diversified Services, Inc., by

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, June 30, 1949 (Concluded)

Alleghany Corporation from Mr. Bertin C. Gamble. With respect to such sales the Company may or may not be liable under Section 12 of the Securities Act of 1933 but it does not admit any such liability.

11. Termination of Management and Underwriting Contracts with Affiliated Open-end Investment Companies

Due to the acquisition of the controlling shares of Investors Diversified Services, Inc., by Alleghany Corporation on April 27, 1949, the underwriting and management agreements with the Company's affiliated open-end investment companies were automatically terminated in accordance with the provisions of the agreements as provided by law. New underwriting agreements were entered into between the Company and the affiliated open-end investment companies on May 16, 1949 and new investment management agreements were entered into on October 5, 1949. Under the terms thereof, the Company will receive fees on the same basis from the respective dates of the agreements as was provided for under the terminated contracts.

During the periods from the date of termination of the agreements to dates of the new agreements, the Company continued to furnish its affiliated open-end funds with underwriting and management service without written agreements. On October 5, 1949, the stockholders of the affiliated open-end investment companies authorized payments for such services, and the Company subsequently accepted such payments, on bases which resulted in a decrease in management fees of $103,815.81 and of underwriting fees of $28,444.14 from the fees which would have been payable on the bases of the terminated and new agreements. Of such amounts, $102,953.11 was applicable to the six months ended June 30, 1949.

Pursuant to agreement, on October 7, 1949, Alleghany Corporation loaned the Company $137,259.95, representing the difference between the fees received from the affiliated open-end investment companies and fees which would have been received under the terminated contracts during the period from date of termination of the old agreements to dates of the new agreements, and the Company gave Alleghany Corporation its non-interest bearing note which is subordinate to the Company's obligation to holders of face amount certificates and is payable when the Company has established reserves on said certificates (without reducing the aggregate of its surplus and reserve for contingencies below $1,000,000, unless otherwise determined by the Board of Directors) in an amount at least equal to the minimum requirements of section 28(a) of the Investment Company Act of 1940.

12. Federal Income Taxes

Provision for federal income taxes have been made on the basis of provisions of the Internal Revenue Code, as amended, whereby the taxable income of the Company may be included in a consolidated federal income tax return with its domestic subsidiaries. On an unconsolidated basis the provision for federal income tax would have been approximately $22,000.00. Federal income taxes for years subsequent to 1945 have not been finally determined.

13. Gross Rates of Return on Investments

The average gross rates of return (exclusive of profit or loss on sales) realized by the Company on marketable securities, mortgages, and certificate loans for the first six months of 1949 and the year 1948, based upon the monthly average book values of the investments, were as follows:

	First six months of 1949	Year 1948
Securities	3.63%	3.58%
Mortgages	4.53%	4.38%
Certificate loans	5.42%	5.64%
Combined average	4.36%	4.24%

[fol. 2458]

INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, June 30, 1949

SUMMARY OF INVESTMENTS IN SECURITIES

Description	Market Value*
BONDS:	
Domestic bonds:	
U. S. Government and U. S. Government institutions	$ 7,054,040.20
Municipal	82,172.20
Railroad	4,158,302.50
Public utility	4,273,406.25
Industrial	8,868,235.36
Total domestic bonds	$24,436,156.51
Canadian bonds:	
Dominion Government and Dominion Government Guaranteed	$ 1,449,687.50
Provincial	3,409,971.26
Municipal	1,028,157.40
Public utility and industrial	6,458,045.00
Total Canadian bonds	$12,345,861.16
Total bonds	$36,782,017.67
PREFERRED STOCKS:	
Domestic preferred stocks:	
Railroad	$ 546,495.50
Public utility	6,110,938.13
Industrial	13,374,991.50
Total domestic preferred stocks	$20,032,425.13
Canadian preferred stocks	250,228.75
Total preferred stocks	$20,282,653.88
COMMON STOCKS – Domestic	312,945.76
Total investments in securities	$57,377,617.31

DETAILS OF INVESTMENTS IN SECURITIES

Description	Face amount of bonds or number of shares of stock	Market Value*
BONDS:		
DOMESTIC BONDS:		
U. S. GOVERNMENT AND U. S. GOVERNMENT INSTITUTIONS:		
Treasury Bonds, 2 %, 1952/50	$ 30,000.00	$ 30,300.00
Treasury Bonds, 2½%, 1952/50	50,000.00	50,968.75
Treasury Bonds, 2½%, 1954/51	55,000.00	56,925.00

INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, June 30, 1949—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
BONDS — continued		
Treasury Bonds, 2 ½%, 1954/52	$ 15,000.00	$ 15,337.50
Treasury Bonds, 2½%, 1956/54	35,000.00	37,012.50
Treasury Bonds, 2½%, 1968/63	650,000.00	670,312.50
Treasury Bonds, 2½%, 1970/65	265,000.00	271,128.13
Treasury Bonds, 2½%, 1972/67	180,000.00	183,262.50
Treasury Bonds, 2½%, 1972/67	5,330,000.00	5,426,606.25
F.H.A. Mutual Mortgage Insurance Fund Deb., Series "A" (Reg.), 3%, 1953-61	287,250.00	300,061.76
F.H.A. War Housing Insurance Fund Deb., Series "H" (Reg.), 2½%, 1958	12,050.00	12,125.81
Total U. S. Government and U. S. Government Institutions		$7,054,040.20
MUNICIPAL:		
Sacramento Municipal Utility District, Series "D," 5%, 1970-73	$ 57,000.00	$ 88,172.50
RAILROAD:		
Baltimore & Ohio R. R. Co., Pittsburgh, Lake Erie & West Virginia, "A," 4%, 1980	$ 261,000.00	$ 207,495.00
Baltimore & Ohio R. R. Co., 1st Mtge., "A," 4%, 1975	5,000.00	4,150.00
Birmingham Terminal Co., 1st Mtge., 4%, 1957	75,000.00	76,875.00
Boston & Maine R. R., 1st Mtge., "RR," 4%, 1960	194,000.00	143,802.50
Chicago & Eastern Illinois R. R. Co., 1st Mtge., Series "B," 3½%, 1985	460,000.00	352,800.00
Chicago & Western Indiana R. R. Co., 1st and Ref. Mtge., S. F., Series "D," 4½%, 1962	417,000.00	431,073.75
Cleveland Short Line R. R., 1st Mtge., 4½%, 1961	176,000.00	171,160.00
Cleveland Union Terminal Co., 1st Mtge., S. F., Series "B," 5%, 1973	168,000.00	172,200.00
Denver & Rio Grande Western R. R. Co., 1st Mtge., Series "A," 3-4%, 1993	226,000.00	201,140.00
Erie R. R. Co., 1st Cons. Mtge., Series "G," 3½%, 2000	232,000.00	192,560.00
Gulf, Mobile & Ohio R. R. Co., 1st and Ref. Mtge., Series "D," 3½%, 1969	200,000.00	199,500.00
Louisville & Nashville R. R. Co., 1st and Ref. Mtge., Series "G," 2½%, 2003	90,000.00	69,187.50
New York Central & Hudson River R. R., Mtge. (Reg.), 3½%, 1997	50,000.00	33,375.00
New York Central & Hudson River R. R., Mtge., 3½%, 1997	370,000.00	260,850.00
New York, New Haven & Hartford R. R. Co., 1st and Ref., Series "A," 4%, 2007	98,000.00	55,860.00
Northern Pacific Ry. Co., Gen. Lien, 3%, 2047	150,000.00	86,062.50
Northern Pacific Ry. Co., Gen. Lien (Reg.), 3%, 2047	40,000.00	22,300.00
Pennsylvania R. R. Co., Gen. Mtge., Series "B," 5%, 1968	50,000.00	49,625.00
Peoria & Pekin Union Ry. Co., 1st Mtge., Series "A," 5½%, 1974	193,000.00	199,755.00
Pittsburgh, Cincinnati, Chicago & St. Louis R. R. Co., Gen. Mtge., Series "E," 3½%, 1975	10,000.00	7,600.00

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INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, June 30, 1949—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
BONDS — continued		
St. Louis, San Francisco Ry. Co., 2nd Mtge., Conv. Income (Reg.), 4½%, 2022	$ 150,000.00	$ 73,125.00
St. Louis, San Francisco Ry. Co., 1st Mtge., Series "A," 4%, 1997	300,000.00	255,000.00
St. Louis, Southwestern Ry. Co., 2nd Inc., 4%, 1989	10,000.00	9,525.00
Texas & Pacific Railway Co., Gen. & Ref. Mtge., Series "E," 3½%, 1985	125,000.00	123,906.25
Western Pacific R. R. Co., 1st Mtge. (Reg.), 4%, 1974	750,000.00	759,375.00
Total railroad		$4,158,302.50
PUBLIC UTILITY:		
American Telephone & Telegraph Co., Conv. Deb., 2½%, 1961	$ 500,000.00	$ 512,500.00
Brooklyn Union Gas Co., S. F. Deb., 4%, 1969	145,000.00	148,081.25
Consolidated Edison Co., Conv. Deb., 3%, 1963	250,000.00	266,875.00
Consolidated Edison Co., 1st and Ref. Mtge., Series "E," 3%, 1979	1,000,000.00	1,033,750.00
Consolidated Gas, Electric Light & Power Co. of Baltimore, Conv. Deb., 2½%, 1962	250,000.00	257,500.00
Duke Power Co., 1st and Ref. Mtge., 2¾%, 1979	250,000.00	256,250.00
Iowa Electric Co., 1st Mtge., Series "A," 4%, 1961	33,000.00	33,412.50
Joplin (Mo.) Water Works Co., 1st Mtge., Series "A," 5%, 1957	25,000.00	26,250.00
Kokomo Water Works Co., 1st Mtge., Series "A," 5%, 1958	20,000.00	21,000.00
Laclede Gas Light Co., Conv., S. F. Deb., 4½%, 1963	275,000.00	311,093.75
Los Angeles Transit Lines, 1st Mtge., 3½%, 1950-54	65,000.00	64,350.00
Monongahela Valley Water Co., 1st Mtge., G'td., Series "A," 5½%, 1959	25,000.00	25,062.50
New England Electric System, Deb., 3½%, 1977	150,000.00	142,500.00
Philadelphia Co., Coll. Trust, S. F., 4½%, 1961	89,000.00	93,227.50
Twin City Rapid Transit Co., Coll. Trust, 4%, 1964	100,000.00	82,500.00
Virginia Electric & Power Co., Conv. Deb., 3½%, 1968	250,000.00	270,625.00
West Penn Electric Co., Deb., 5%, 2030	207,000.00	219,678.75
Wisconsin Electric Power Co., 1st Mtge., 2¾%, 1979	500,000.00	508,750.00
Total public utility		$4,273,406.25
INDUSTRIAL:		
American Airlines, Inc., S. F. Deb., 3%, 1966	$275,000.00	$ 231,000.00
American Box Board Co., Conv. S. F. Deb., Series "A," 4½%, 1964	500,000.00	477,500.00†
American Window Glass Co., 4½%, Serially 1950/59	800,000.00	800,000.00†
Bethlehem Steel Corp., Cons. Mtge., S. F. Series "K," 3%, 1979	500,000.00	507,500.00
Big Bear Markets, 4½%, 1959	500,000.00	500,000.00†
Dewey and Almy Chemical Co., Conv. Deb., 2¾%, 1976	152,000.00	129,200.00
Domestic Credit Corp., Subordinated Note, 2½%, 1951	140,000.00	136,249.05†
Domestic Credit Corp., S. F. Deb., Series "B," 4%, 1958	500,000.00	485,302.70†
First Acceptance Corp., Subordinated Note, 5%, 1956	500,000.00	500,000.00†
First Acceptance Corp., Subordinated Note, 4½%, 1957	500,000.00	500,000.00†
General Finance Corp., Deb. S. F., 4%, 1960	55,000.00	48,950.00
Marshall-Wells Co., Cum. Income Deb. (Reg.), 7%, 1969	46,100.00	55,320.00

INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, June 30, 1949—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
BONDS — continued		
Morris Plan Co. of Cedar Rapids, Iowa, 4% Promissory Note No. C97, 1953	$ 50,000.00	$ 50,000.00
Northwestern Refining Co., 5%, Serial Notes, 1950-53	30,000.00	27,088.61
Seaboard Finance Co., Subordinated Note, 4%, 1951	750,000.00	750,000.00
Standard Factors Corp., Subordinated Note, 4½%, Serial, 1953-58	500,000.00	500,000.00
Standard Factors Corp., Subordinated Note, 4½%, 1959	250,000.00	250,000.00
State Loan and Finance Corp., 4½%, Serial Note 1951-59	600,000.00	600,000.00
Suburban Propane Gas Corp., S. F. Deb., Series "B," 4½%, 1957	555,000.00	503,875.00
Victor Products Corp., Deb. S. F., 4½%, 1959	750,000.00	750,000.00
Westinghouse Electric Corp., Conv. Deb., 2.65%, 1973	500,000.00	501,250.00
Wrigleys Stores, Inc., Note and Loan Agreement, 4½%, 1960	500,000.00	500,000.00
Total industrial		$ 8,868,235.36
Total domestic bonds		$94,436,156.51
CANADIAN BONDS:		
Dominion Government and Dominion Government Guaranteed:		
Dominion of Canada, 3%, 1956/53	$ 30,000.00	$ 30,937.50
Dominion of Canada, 3%, 1957/54	75,000.00	77,568.75
Dominion of Canada, 3%, 1966/61	10,000.00	10,087.50
Dominion of Canada, 3%, 1959/62	1,200,000.00	1,215,000.00
Dominion of Canada, 3%, 1959/63	100,000.00	101,000.00
Canadian National Ry. Co., Govt. G'td., 3%, 1961/66	15,000.00	15,093.75
Total Dominion Government and Dominion Government Guaranteed		$ 1,449,687.50
Provincial:		
Alberta, 3½%, 1961/50	$ 1,000.00	$ 1,012.50
Alberta, 3½%, 1962/50	1,000.00	1,012.50
Alberta, 3½%, 1965/50	1,000.00	1,012.50
Alberta, 3½%, 1968/50	50,000.00	50,625.00
Alberta, 3½%, 1972/50	25,000.00	25,312.50
Alberta, 3½%, 1973/50	100,000.00	101,250.00
Alberta, 3½%, 1974/50	2,000.00	2,025.00
Alberta, 3½%, 1975/50	7,000.00	7,087.50
Alberta, 3½%, 1976/50	50,000.00	50,593.75
Alberta, 3½%, 1977/50	62,000.00	62,736.25
Alberta, 3½%, 1978/50	15,000.00	15,178.13
Alberta, 3½%, 1979/50	4,000.00	4,047.50
Alberta, 3½%, 1980/50	165,000.00	166,959.38
Manitoba, 2½%, 1957-58	100,000.00	99,000.00
Manitoba, 3½%, 1958	50,000.00	58,937.50

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INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, June 30, 1949—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
CANADIAN BONDS — continued		
Ontario, 3%, 1957/59	$ 335,000.00	$ 339,187.50
Ontario, G't'd., The Hydro Electric Power Commission of Ontario, 3%, 1964	325,000.00	323,375.00
Ontario, G't'd., The Hydro Electric Power Commission of Ontario, 3%, 1963/65	735,000.00	729,487.50
Ontario, G't'd., The Hydro Electric Power Commission of Ontario, 3%, 1967-65	450,000.00	444,375.00
Ontario, G't'd., The Hydro Electric Power Commission of Ontario, 3%, 1968	410,000.00	403,850.00
Prince Edward Island, 3%, 1956	125,000.00	125,156.25
Quebec, S. F. Deb., 3%, 1965/68	400,000.00	397,750.00
Total provincial		$ 3,409,971.26
Municipal:		
Edmonton (City of), 3%, 1949-58	$ 50,000.00	$ 50,000.00
Edmonton (City of), 3½%, 1959-68	25,000.00	25,000.00
Fort William, Ontario, Vocational School, Deb., 6%, 1962	100,000.00	123,000.00
Greater Vancouver Water District, 4%, 1950-68	204,000.00	211,140.00
Greater Vancouver Water District, 2½%, 1964-67, Serial Deb.	50,000.00	45,750.00
Halifax (City of), Nova Scotia, 3½%, 1958	50,000.00	49,875.00
Ingersoll (Town of), Deb., 3½%, 1949-68	50,000.00	49,690.00
Norwood School District No. 2113, Manitoba Deb., 4½%, 1949-53	50,000.00	50,062.50
Port Alfred, Quebec, 3½%, 1954/58	36,500.00	36,228.25
Stony Plain School Division 23, 4½%, 1949-58	30,000.00	30,525.00
Thorhild School Division No. 57, Serial Deb., 4½%, 1949/58	40,000.00	40,950.00
Rivers (Town of), 4½%, Serial 1949/68	21,000.00	21,000.00
North York (Township of), Deb., 3½%, 1949-68	50,000.00	51,381.25
North York (Township of), Ont. Deb., 3½%, 1950/1959	30,000.00	30,825.00
Vancouver (City of), British Columbia, 3½%, 1964/65	50,000.00	48,812.50
Vancouver (City of) Deb., 3½%, 1957/59	61,000.00	61,212.50
Village of Delhi, Ontario 3½%, Deb., Serially 1950/1958	28,000.00	28,840.00
Village of Delhi, Ontario, 3½%, Serially, 1950/59	24,870.00	25,367.40
West Vancouver (District of), 3%, 1953/57	50,000.00	48,500.00
Total municipal		$ 1,028,157.40
Public Utility and Industrial:		
Bell Telephone Co. of Canada, 1st Mtge., Series "G," 3½%, 1975	$ 500,000.00	$ 506,250.00
Bell Telephone Co. of Canada, 1st Mtge., Series "E," 3%, 1977	50,000.00	48,625.00
Bowaters Newfoundland Pulp & Paper Mills, Ltd., 1st Mtge., 3½%, 1968	50,000.00	48,125.00
British American Oil Co., Ltd., Serial Deb., 2½%, 1957-68	100,000.00	99,000.00
British Columbia Electric Co., Ltd., 1st Mtge., Series "A," 3½%, 1967	450,000.00	420,187.50
Canada Electric Co., Ltd., 1st Mtge., Series "A," S. F., 3½%, 1967	50,000.00	47,250.00
Canada Steamship Lines, 3½%, 1954	36,000.00	35,910.00

INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, June 30, 1949—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
CANADIAN BONDS—continued		
Canadian Breweries, Ltd., S. F. Deb., 3½%, 1967	$ 325,000.00	$ 299,000.00
Canadian Celanese, Ltd., Deb., 3%, 1962	200,000.00	197,000.00
Canadian Oil Companies, Ltd., 1st Mtge., 3½%, 1962	125,000.00	122,968.75
Canadian Western Lumber Co., Ltd., 1st Mtge., S. F. Deb., Series "A," 4%, 1962	150,000.00	151,687.50
Columbia Cellulose Co., Ltd., 1st Mtge., 4½%, 1965	250,000.00	250,937.50
Consolidated Bakeries of Canada, Ltd., 3½%, Serial, 1963	200,000.00	200,000.00
Consolidated Paper Corp., Ltd., 1st Mtge., 3½%, 1967	150,000.00	153,000.00
Crown Trust Co., 3%, G'td. Investment Certificate, 1954	100,000.00	100,000.00
Dominion Tar and Chemical Co., Ltd., 1st Mtge., Series "A," 3½%, 1953	75,000.00	76,125.00
Eastern Canadian Greyhound Lines, Ltd., Equip. Trust, 3%, 1950/54	40,000.00	40,000.00
Eastern Canada Savings & Loan Co., 3½%, 1958	50,000.00	49,625.00
Eastern Light & Power Co., Ltd., 1st Mtge., Coll. Trust, Series "A," 4%, 1965	25,000.00	25,250.00
Eastern Steel Products, Ltd., 1st Secured, S. F., Series "A," 4%, 1966	50,000.00	48,812.50
E. B. Eddy, Co., 1st Mtge., S. F., Series "A," 3½%, 1966	125,000.00	124,375.00
Gatineau Power Co., S. F. Deb., 2½%, 1961	50,000.00	45,000.00
The Great Lakes Paper Co., Ltd., 1st Mtge., S. F., 3½%, 1967	66,000.00	66,330.00
Howard Smith Paper Mills, Ltd., 3%, 1954	150,000.00	150,750.00
Imperial Tobacco Co. of Canada, Ltd., Deb. 2½%, 1954/66	200,000.00	194,800.00
Industrial Acceptance Corp., Ltd., Series "E," Secured Notes 3½%, 1964	200,000.00	199,500.00
Industrial Acceptance Corp., Ltd., S. F. Deb., Series "A," 3½%, 1966	65,000.00	61,750.00
Industrial Acceptance Corp., Ltd., 4%, 1966	10,000.00	10,050.00
Kelowna Growers Exchange, 4%, 1955	25,000.00	25,000.00
Lake St. John Power & Paper Co., Ltd., 3½%, 1961	28,000.00	28,140.00
Lower St. Lawrence Power Co., 1st Mtge., Series "B," 3½%, 1965	100,000.00	97,000.00
Maclaren Quebec Power Co., 1st Mtge., S. F., Series "A," 3%, 1969	200,000.00	190,750.00
H. R. MacMillan Export Co., Ltd., 1st Mtge. & Coll. Tr., Series "A," 4%, 1965	75,000.00	76,406.25
Massey-Harris Co., Ltd., 1st Mtge., Serial, S. F., Series "A," 3%, 1966	200,000.00	191,000.00
Massey-Harris Co., Ltd., Deb., 4½%, 1963	50,000.00	50,750.00
Henry Morgan Properties, Ltd., 1st Mtge., S. F. Series "A," 3½%, 1967	100,000.00	99,500.00
National Breweries, Ltd., S. F. Deb., Series "A," 3½%, 1963	50,000.00	50,000.00
National Light & Power Co., Ltd., 1st Mtge., S. F., Series "C," 4½%, 1961	50,000.00	50,750.00
Nova Scotia Trust Company, Deb., 3½%, 1958	50,000.00	50,000.00
Ottawa Light, Heat & Power Co., Ltd., Ref. Mtge. and Coll. Trust, S. F., 4%, 1957	25,000.00	25,437.50
Price Bros. & Co., Ltd., 1st Mtge., 1946 Series, 3½%, 1966	45,000.00	45,450.00
Provincial Transport Co. Equip., Trust Ctfs. (Reg.), Series "A," 3%, 1950–52/54	200,000.00	200,000.00
Quebec Power Co., 1st Mtge. and Coll. Trust, S. F., Series "E," 3%, 1963	190,000.00	186,912.50
Quebec Power Co., 1st Mtge. and Coll. Trust, S. F., Series "D," 3½%, 1962	300,000.00	305,625.00

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INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, June 30, 1949—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
CANADIAN BONDS — continued		
Shawinigan Water & Power Co., 1st Mtge. and Coll. Trust, S. F., Series "L," 3%, 1961	$ 135,000.00	$ 134,325.09
Simpsons, Ltd., Secured Term Notes, 3%, 1954-55	100,000.00	100,500.00
The Steel Co. of Canada, Ltd., S. F. Deb., 2¾%, 1967	300,000.00	285,750.00
Union Gas Co. of Canada, Ltd., 1st Mtge., 4¼%, 1950	58,500.00	59,377.50
United Corp., Ltd., Series "A," 4%, 1958	200,000.00	202,500.00
United Fuel Investments, Ltd., 1st Coll. Mtge., S. F., Series "A," 4%, 1959	50,000.00	51,000.00
United Grain Growers, Ltd., 1st Mtge., S. F., Series "C," 4%, 1963	125,000.00	126,562.50
Victoria Trust & Savings Co., Deb., 3½%, 1958	50,000.00	50,000.00
Total public utility and industrial		$ 6,459,045.00
Total Canadian bonds		$12,345,861.18
Total bonds		$36,782,017.67
PREFERRED STOCKS:		
DOMESTIC PREFERRED STOCKS:		
Railroad:		
Carolina, Clinchfield & Ohio Ry., 5%, G'td.	1,810	$ 181,905.00
Chesapeake & Ohio Ry. Co., 3½% Cum. Conv.	2,000	160,750.00
Delaware & Bound Brook R. R. Co., 8% Leased Line Stock	1,707	70,840.50
Seaboard Airline R. R. Co., Series "A," 5%, Non Cum.	200	10,150.00
Virginian Railway Co., 6% Cum.	3,900	122,850.00
Total railroad		$ 546,495.50
Public Utility:		
Associated Telephone Co., Ltd., 4½% Cum.	6,000	$ 109,500.00
Atlanta Gas Light Co., 4½% Cum.	1,500	154,687.50
Birmingham Electric Co., 4.20% Cum.	610	51,850.00
California Water & Telephone Co., $1.20 Cum.	5,000	106,250.00
Central Electric & Gas Co., 4½% Cum., Series "A"	2,800	115,500.00
Central Illinois Electric & Gas Co., 4.10% Cum., Series "A"	3,355	301,950.00
Central Maine Power Co., 3½% Cum.	5,283	411,413.63
Dayton Power & Light Co., 3¾% Cum., Series "A"	810	76,545.00
El Paso Electric Co., $4.50 Cum.	350	36,575.00
El Paso Natural Gas Co., 4.10% Cum.	1,235	118,560.00
Florida Power Corp., 4% Cum.	2,075	175,337.50
Illinois Power Co., 4.70% Cum.	2,500	130,000.00
Indiana Associated Telephone Corp., $2.00 Cum.	3,750	131,250.00
Kansas Nebraska Natural Gas Co., Inc., $5.00 Cum.	2,000	201,000.00
Louisiana Power & Light Co., $6.00 Cum.	1,310	146,720.00
New England Power Co., 6% Cum.	100	12,850.00
New Orleans Public Service, Inc., 4¾% Cum.	3,850	402,325.00
Northern States Power Co. (Wis.), 5% Cum.	500	55,000.00

INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, June 30, 1949—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
PREFERRED STOCKS — continued		
Oklahoma Natural Gas Co., Series "A," 4½% Cum.	5,300	$ 283,550.00
Otter Tail Power Co., $3.60 Cum.	3,066	256,011.00
Pacific Gas & Electric Co., 5½% Cum., 1st	1,900	58,662.50
Pennsylvania Electric Co., 3.70% Cum., Series "C"	800	72,600.00
Pennsylvania Telephone Corp., $2.10 Cum.	245	11,821.25
Public Service Co. of Colorado, 4½% Cum.	150	14,550.00
Public Service Co. of Oklahoma, 4% Cum.	4,000	356,000.00
Sierra Pacific Power Co., 6% Cum.	547	63,178.50
Southern California Edison Co., 4.32% Cum.	13,200	343,200.00
Southern California Edison Co., 4.48% Cum. Conv.	7,800	213,525.00
Southern California Edison Co., 4.56% Cum. Conv.	4,500	127,125.00
Southern California Gas Co., 6% Cum., Series "A"	2,000	68,250.00
Southern California Water Corp., 4½% Cum.	8,000	172,000.00
Southern Indiana Gas & Electric Co., 4.80% Cum.	2,000	214,500.00
Southern Union Gas Co., 4½% Cum.	5,000	410,000.00
Southwestern Public Service Co., 3.90% Cum.	2,400	208,200.00
Texas Electric Service Co., $6.00 Cum.	625	71,250.00
United Transit Co., 5% Cum. Conv.	2,000	54,500.00
Virginia Electric & Power Co., $5.00 Cum.	2,570	293,301.25
West Coast Telephone Co., $1.20 Cum.	3,700	81,400.00
Total public utility		$ 6,110,935.13
Industrial:		
Affiliated Gas Equipment, Inc., WW $3.00 Cum.	6,000	$ 283,500.00
American Airlines, Inc., 3½% Cum. Conv.	2,900	183,425.00
American Cyanamid Co., 3½% Cum. Conv., Series "A"	3,000	316,500.00
Armstrong Cork Co., $4.00 Cum. Conv.	2,500	265,625.00
Atlantic Greyhound Corp., 4% Cum.	964	84,832.00
Atlantic Refining Co., Series "A," 4% Cum. Conv.	1,960	211,190.00
Beneficial Industrial Loan Corp., $3.25 Cum. Conv.	2,000	150,750.00
Booth Fisheries Corp., 4% Cum. Conv.	5,000	355,000.00
Bullocks, Inc., 4% Cum.	2,900	247,950.00
Burlington Mills Corp., 3½% Cum. Conv., 2nd	1,000	72,750.00
Butler Brothers, 4½% Cum.	1,730	106,395.00
Canada Dry Ginger Ale, Inc., $4.25 Cum. Conv.	2,500	277,500.00
Celanese Corp. of America, $4.75 Cum. 1st	300	29,850.00
Chicago Pneumatic Tool Co., $3.00 Cum. Conv.	1,600	80,000.00
Christiana Securities Co., 7% Cum.	391	55,326.50
Cluett Peabody & Co., Inc. 4% Cum. Conv., 2nd	2,900	214,600.00
Commercial Credit Co., 3.60% Cum. Conv.	2,000	192,000.00
Commonwealth Loan Co., 4% Cum.	2,450	214,375.00
Container Corp. of America, 4% Cum.	640	60,960.00
Cornell Dubilier Electric Corp., $5.25 Cum., S. F., Series "A"	888	83,028.00
Dow Chemical Co., $3.25 Cum. Conv., 2nd	2,100	213,675.00
Dresser Industries, Inc., 3½% Cum. Conv.	2,500	210,625.00
Dun & Bradstreet, Inc., 4½% Cum.	727	73,427.00

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INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, June 30, 1949—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
PREFERRED STOCKS — continued		
Edison Brothers Stores, Inc. 4½% Cum.	995	$ 90,296.25
Ekco Products Co., 4½% Cum.	750	72,000.00
Firth Sterling Steel & Carbide Corp., 7% Cum.	2,731	150,205.00x
Frank (A. B.) Co., 5½% Cum.	2,554	234,968.00†
General Cable Corp., 4% Cum., 1st	5,270	361,653.75
General Controls Co., 6% Cum.	2,000	43,000.00
General Mills, Inc., 3¾% Cum. Conv.	3,000	306,000.00
General Tire & Rubber Co., 3¾% 1st, Cum.	1,020	69,360.00
General Tire & Rubber Co., 3¾% Cum. Conv., 2nd	2,175	126,150.00
Golden State Co., Ltd., 4% Cum. Conv.	2,600	157,300.00
Great Atlantic & Pacific Tea Co. of America, 7% Cum., 1st	225	30,768.75
Greyhound Corp., 4½% Cum.	1,570	183,260.00
Heyden Chemical Corp., 3½%, Series "A," Cum.	1,375	114,812.50
Hollingsworth & Whitney Co., $4.00 Cum.	1,250	110,937.50
Interchemical Corp., 4½% Cum.	2,500	222,500.00
Johns-Manville Corp., 3½% Cum. Conv.	1,900	199,500.00
Koppers Co., Inc., 4% Cum.	6,760	618,540.00
Le Tourneau (R. G.), Inc., $4.00 Cum.	2,380	102,340.00
Liquid Carbonic Corp., 3½% Cum. Conv.	2,300	149,500.00
Lowenstein (M.) & Sons, Inc., 4½%, Series "A," Cum.	1,975	191,081.25
Marshall Field & Co., 4½% Cum.	1,800	175,500.00
McCrory Stores, 3½% Cum. Conv.	2,600	243,750.00
McKesson & Robbins, Inc., $4.00 Cum.	5,000	477,500.00
McQuay-Norris Manufacturing Co., 4½% Cum. Conv.	100	9,500.00
Minneapolis-Honeywell Regulator Co., 3.20% Cum. Conv., Series "A"	3,000	273,000.00
Monsanto Chemical Co., $3.25 Cum. Conv., Series "A"	3,000	313,500.00
Mutual Loan Co., 6% Cum.	150	14,625.00
National Tea Co., 4½% Cum.	5,300	265,000.00
Northland Greyhound Lines, Inc., 3½% Cum.	2,040	173,400.00
Oliver Corp., 4¼% Cum. Conv.	3,500	323,750.00
Red Owl Stores, Inc., 4½% Cum. Conv., Series "A"	1,000	84,250.00
Reliance Mfg. Co., 3½% Cum. Conv.	3,895	200,592.50
Richs, Inc., 3½% Cum.	410	36,900.00
Robertshaw Fulton Controls Co., 4½% Cum. Conv.	8,500	187,000.00
Rome Cable Corp., 4% Cum. Conv.	1,650	34,237.50
Safeway Stores, Inc., 5% Cum.	670	74,705.00
St. Regis Paper Co., 1st, Series "A," 4.40%, Cum.	2,500	199,375.00
Seabrook Farms Co., 4½%, Cum.	4,000	320,000.00
Servel Incorporated, $4.50 Cum.	2,500	200,000.00
Smith (Alexander) & Sons Carpet Co., 3½% Cum.	1,808	153,680.00
Standard Steel Spring Co., 4% Cum. Conv.	4,500	183,375.00
Sylvania Electric Products, Inc., $4.00 Cum.	1,630	131,215.00
Thalhimer Bros., Inc., 3.65% Cum.	2,400	204,000.00
Thrifty Drug Stores Co., Inc., 4½% Cum.	4,350	350,400.00
Toledo Blade Co., 4½% Cum.	2,250	213,750.00
Twentieth Century-Fox Film Corp., $4.50 Cum., Prior	1,100	109,450.00

INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, June 30, 1949—Continued

Description	Face amount of bonds or number of shares of stock	Market Value*
PREFERRED STOCKS—continued		
Twin Coach Co., $1.50 Cum. Conv.	4,850	$ 67,900.00
United Aircraft Corporation, 5% Cum. Conv.	2,500	284,375.00
U. S. Hoffman Machinery Corp., 4¼% Cum.	8,700	395,850.00
United Wall Paper, Inc., 4% Cum. Conv.	2,900	66,700.00
Universal Pictures Co., Inc., 4¼% Cum.	2,390	130,255.00
Total industrial		$13,374,991.50
Total domestic preferred stocks		$20,032,425.15
Canadian Preferred Stocks:		
British Columbia Electric Co., Ltd., 4% Cum.	710	$ 61,415.00
Canadian Car & Foundry Co., Ltd., $1.00, Non-Cum. Conv., Class "A"	2,500	33,437.50
Dominion Fabrics, Ltd., 6% Cum., 1st	500	26,250.00
Dominion Tar & Chemical Co., Ltd., $1.00 Cum.	2,025	43,537.50
The Shawinigan Water & Power Co., 4% Cum. "A"	850	39,631.25
Western Grocers, Ltd., $1.40 Cum.	315	9,607.50
Weston (George), Ltd., 4½% Cum.	400	36,350.00
Total Canadian preferred stocks		$ 250,228.75
Total preferred stocks		$20,282,653.88
Common Stocks—Domestic:		
Investors Mutual, Inc.	10,000	$ 111,004.55
Investors Selective Fund, Inc.	10,000	93,685.55
Investors Stock Fund, Inc.	10,000	108,255.68
Total common stocks—domestic		$ 312,945.78
Total investments in securities		$57,377,617.31

* See note 5 of "Notes to Financial Statements" for basis of valuation.

† At fair value in the opinion of the Board of Directors of the Company—not currently quoted.

x In arrears on dividend payments.

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INVESTORS DIVERSIFIED SERVICES, INC.

Supplementary Information for the Six Months Ended June 30, 1949

PURCHASES AND SALES OF SECURITIES

During the six months ended June 30, 1949, purchases of securities, other than United States Government bonds, aggregated $13,003,350.56. The aggregate cost of securities sold, other than United States Government bonds, was $8,183,626.28.

COMPENSATION PAID TO OFFICERS AND DIRECTORS

During the six months ended June 30, 1949, the Company paid fees to directors in the aggregate amount of $1,666.64. No special compensation was paid to directors.

Compensation to executive officers (excluding assistants to vice presidents, to secretary, and to treasurer) aggregated $158,083.32 for the periods during which they held office during the six months ended June 30, 1949.

(Copies of this Report are being made available to banks, financial agencies and institutions, for their files for ready reference. This material, under no circumstances, is to be used in the solicitation of applications for investment certificates.)

IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT No. K-173

INVESTORS DIVERSIFIED SERVICES, INC.

ESTABLISHED 1894
(*As Investors Syndicate*)
MINNEAPOLIS 2, MINNESOTA

Semi-Annual Report to Stockholders

June 30, 1950

[fol. 2470]

INVESTORS DIVERSIFIED SERVICES, INC.

ESTABLISHED 1894

(As Investors Syndicate)

EXECUTIVE OFFICES

Roanoke Building, Minneapolis 2, Minn.

Board of Directors

J. J. ANZALONE
GRADY CLARK
E. E. CRABB
H. J. GUILD
R. W. PURCELL
GALEN VAN METER

Principal Officers

E. E. CRABB - - - - - - - - *Chairman of the Board and President*
GALEN VAN METER - - - - - - - - - *Vice Chairman of the Board*
H. K. BRADFORD - - - - - - - - - - - - - *Vice President*
H. C. CARR - - - - - - - - - - - - - - - *Vice President*
GRADY CLARK - - - - - - - - - - - - - - *Vice President*
E. FRANKLIN HATCH - - - - - - - - - - - - - *Vice President*
C. D. MCGUIGGAN - - - - - - - - - - - - - *Vice President*
C. J. MOORE - - - - - - - - - - - *Vice President and Secretary*
J. R. RIDGWAY, SR. - - - - - - - - - - - - - *Vice President*
D. E. RYAN - - - - - - - - - - - - - - - *Vice President*
N. B. WAAG - - - - - - - - - - - *Vice President and Controller*
J. B. RACEY - - - - - - - - - - - - - - - - - *Treasurer*
T. L. KENEALY - - - - - - - - - - - - - - - - - *Auditor*

INVESTORS DIVERS

Balance She

ASSETS (NOTES 2 AND 3)

CASH (Note 4):			
On hand and in banks		$ 2,822,338.28	
Deposited with central depositary, states, and provinces		620,237.47	
Total cash			$ 3,442,575.75
SECURITIES (Note 5):			
Bonds at amortized cost:	Market Value		
United States Government	$ 5,195,317.50	$ 5,170,605.78	
Other	19,269,038.97	19,345,014.65	
Preferred stocks at average cost — issue in arrears at market	17,014,508.81	19,518,518.41	
Common stocks at average cost	355,819.32	298,218.43	
Total securities	$41,834,684.60		44,332,357.28
MORTGAGES ON REAL ESTATE— Principal balances, less reserves:			
First mortgages:			
Insured by Federal Housing Administration		$ 65,117,962.75	
Partially guaranteed by Veterans Administration		33,526,177.04	
Other first mortgages and first liens on real estate		110,750,292.71	
Second mortgages fully guaranteed by Veterans Administration		9,238,271.02	
Total mortgages on real estate			218,632,703.52
LOANS ON CERTIFICATES—Secured by reserves			11,901,943.39
REAL ESTATE—Held for investment or sale — at depreciated cost or less			336,263.24
ACCRUED INTEREST AND DIVIDENDS RECEIVABLE ON INVESTMENTS			1,473,762.06
INVESTMENTS IN AND RECEIVABLES FROM SUBSIDIARY COMPANIES:			
Investments in capital stock — at book value of underlying net assets less minority interests (Note 8)		$ 5,744,990.24	
Receivables		1,866,827.09	
Total investments in and receivables from subsidiary companies			7,611,817.33
OTHER ASSETS:			
Due from brokers for securities sold		$ 4,610.12	
Receivables from affiliated companies		469,051.90	
Deposits with Federal National Mortgage Association		345,671.98	
Receivables from sundry debtors, less reserves		278,609.71	
Cash surrender value of life insurance on officers for benefit of company		54,195.85	
Office furniture and fixtures — at depreciated cost		541,811.78	
Inventories of supplies and other deferred charges		158,220.26	
Total other assets			1,852,171.60
TOTAL			$289,583,594.17

[fol. 2472]

IED SERVICES, INC.

ıne 30, 1950

LIABILITIES (Note 2)

CERTIFICATE RESERVES (Notes 1 and 6):		
Installment certificates:		
Cash surrender values attained at dates of last completed certificate years	$232,668,868.77	
Reserve payments applicable to current certificate years	16,174,00[illegible]	
Payments made in advance of current certificate years' requirements and accrued interest thereon	12,304,363.78	
Reserves to stabilize financing costs	11,167,143.61	
Other	1,739,457.16	
Fully paid certificates	8,885,000.11	
Total certificate reserves		$282,838,901.86
OTHER LIABILITIES:		
Accounts payable:		
Commissions due to sales representatives	$ 279,662.87	
Subsidiary companies	71,181.04	
Sundry creditors	350,575.48	
Note payable to affiliated company—subordinated	137,259.95	
Unearned interest on loans	171,887.26	
Undistributed collections from mortgagors and certificate holders	76,307.83	
Accrued taxes:		
Income	1,410,405.41	
Other	88,696.19	
Accrued sales representatives' incentive pay bonus	452,658.51	
Other accrued expenses	16,903.59	
Total other liabilities		3,055,480.93
DEFERRED CREDIT—Mortgage construction loan fees		912,595.00
CAPITAL STOCK AND SURPLUS:		
Capital stock:		
Common, Class "A" (not preferred and non-voting)—$5 par—authorized, 260,000 shares; outstanding, 175,836.37 shares	$ 879,181.85	
Common—$5 par—authorized, 140,000 shares; outstanding, 114,008.16 shares	574,540.80	
Total capital stock	$ 1,453,722.65	
Earned surplus, per accompanying statement (Notes 7 and 8)	1,272,893.73	
Total capital stock and surplus (Notes 9 and 10)		2,726,616.38
TOTAL		$289,533,594.17

INVESTORS DIVERSIFIED SERVICES, INC.

Statement of Net Income and Earned Surplus
For the Six Months Ended June 30, 1950

GROSS INCOME:		
Gross income from investments, mortgage operations, certificate servicing, and management services:		
Investment income:		
Interest on bonds, mortgages, and other loans	$ 5,888,210.84	
Cash dividends on stocks	437,551.36	
Mortgage operations:		
Premiums on mortgages sold:		
To subsidiary companies (Note 11)	411,048.61	
To others	97,718.78	
Service fees:		
On mortgages owned	30,436.80	
On mortgages serviced for subsidiary companies	306,480.38	
On mortgages serviced for others	182,676.29	
Construction loan fee income	2,726,420.59	
Other mortgage income	285,761.09	
Installment certificate servicing income and interest equalization credits	267,638.30	
Investment management and collection fees from subsidiary and affiliated companies	688,896.85	
Other income	56,246.23	
Total		$ 11,379,084.07
Gross underwriting fees from subsidiary and affiliated companies		4,646,276.86
Total gross income		$ 16,025,360.93
COSTS AND EXPENSES:		
Applicable to certificates, investments, mortgage operations, and management services:		
Provision for certificate reserves (Note 1):		
Installment certificates (net after reserve recoveries on terminations of $160,212.49)	$ 6,124,956.18	
Fully paid certificates	177,531.97	
Total	$ 6,302,488.15	
Mortgage branch office and agency expenses—per accompanying statement	1,250,246.78	
Real estate operating loss	15,668.41	
Portion of sales agency fees and expenses regarded as being applicable to installment certificate collection expense	125,049.03	
General and administrative expenses—portion—per accompanying statement	1,178,838.88	
Total costs and expenses applicable to certificates, investments, mortgage operations, and management services		$ 8,872,291.21
Underwriting expenses:		
Commissions and incentive pay bonuses to sales representatives	$ 3,093,390.97	
Collection fees and other allowances to sales agencies—portion regarded as applicable to selling and promotional expenses	197,346.27	
Other direct costs and expenses	285,037.02	

[fol. 2474]

INVESTORS DIVERSIFIED SERVICES, INC.

Statement of Net Income and Earned Surplus For the Six Months Ended June 30, 1950 (Concluded)

COSTS AND EXPENSES (CONT.):		
General and administrative expenses—portion—per accompanying statement	$ 300,351.34	
Total underwriting expenses		3,876,125.60
Total costs and expenses		$ 12,748,416.81
INCOME FROM OPERATIONS		$ 3,276,944.18
INCOME CREDITS—net:		
Adjustment of provision for loss on foreign exchange (Note 2)	$ 57,372.95	
Other	21,076.04	
Total income credits—net		53,448.99
INCOME BEFORE PROFIT OR LOSS ON INVESTMENT TRANSACTIONS AND PROVISION FOR INCOME TAXES		$ 3,330,393.17
PROFIT (LOSS) ON INVESTMENT TRANSACTIONS:		
Realized profit (loss):		
Securities (bonds, first-in, first-out basis; stocks, average cost basis)	$ (188,714.55)	
Real estate (depreciated cost basis)	1,479.41	
Net realized profit (loss) on investment transactions	$ (187,235.14)	
Less credit for reserves applicable to assets sold:		
Securities (Note 5)	$ 98,512.50	
Real estate	2,817.33	
Total credit	$ 101,329.83	
Profit (loss) on investment transactions—net		(85,905.31)
INCOME BEFORE PROVISION FOR INCOME TAXES		$ 3,249,487.80
PROVISION FOR INCOME TAXES:		
Federal (Note 12)	$ 1,175,000.00	
State	10,000.00	
Total	$ 1,185,000.00	
Less amount applicable to deferred mortgage construction fees (Note 12)	277,098.87	
Remainder		907,901.13
NET INCOME FOR THE PERIOD		$ 2,341,586.67
PROPORTIONATE SHARE OF EARNINGS OF SUBSIDIARY COMPANIES FOR THE PERIOD		489,972.00
EARNED SURPLUS AT BEGINNING OF THE PERIOD		Nil
RESTORATION OF RESERVE FOR CONTINGENCIES TO EARNED SURPLUS		1,442,984.00
GROSS SURPLUS		$ 4,274,542.67
APPROPRIATION FOR ADDITIONAL INSTALLMENT CERTIFICATE RESERVES (Note 1)		3,001,648.94
EARNED SURPLUS AT END OF PERIOD (Notes 7 and 8)		$ 1,272,893.73

5.

INVESTORS DIVERSIFIED SERVICES, INC.

General and Administrative Expenses For the Six Months Ended June 30, 1950

Salaries	$ 1,174,390.12
Attorneys' fees and expenses	27,945.96
Traveling expenses	67,722.89
Taxes (other than income taxes)	44,838.75
Rents	68,920.55
Telephone, telegraph, postage, and express	49,510.44
Depositary fees	30,000.00
Accounting, tax service, state examination fees and expenses and actuarial survey	51,466.16
Printing and stationery	26,723.91
Provision for depreciation of office furniture and fixtures	28,818.80
Directors' fees	3,749.94
General office expenses	77,214.27
Other expenses	99,568.88
Total	$ 1,750,870.65
Less amounts charged to subsidiary companies	271,680.45
Remainder	$ 1,479,190.20

NOTE—General and administrative expenses, after deduction of charges to subsidiary companies for use of facilities and personnel, were distributed as follows: To costs and expenses of servicing certificates, investments, mortgage operations, and management agreements — $1,178,838.86; to underwriting expenses — $300,351.34. The distribution of the general and administrative expenses is designed to follow the activities of the Company as set forth in those sections.

Mortgage Branch Office and Agency Expenses For the Six Months Ended June 30, 1950

Commissions and premiums on new loans:	
To subsidiary companies	$ 65,966.69
To others	33,433.19
Salaries	433,854.38
Service fees:	
To subsidiary companies	85,720.48
To others	87,960.25
General National Mortgage Association commitment fees	253,493.28
Cancellation fees paid to servicing agents	70,642.82
Rent	35,241.02
Telephone, telegraph, postage and express	43,873.51
Traveling and automobile expenses	22,738.60
Other expenses	112,322.58
Total	$ 1,250,246.78

[fol. 2476]

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, June 30, 1950

1. Certificate Reserves

(A) The Company has outstanding eight series of installment certificates which were issued prior to 1941. The certificates provide for stipulated payments by the holder for periods ranging from ten to fifteen certificate years. The Company agrees to pay the face amount of the certificate at maturity or the specified cash surrender values designated in the certificates prior thereto. If a payment is not made when due the maturity date is extended by the period of delay and the certificate does not increase in value during such periods. Payments made in advance of due dates are interest bearing in accordance with the terms thereof. The rate of return to the holders varies according to series and is also affected by delays in making payments and terminations prior to maturity. The Company also has outstanding certain interest bearing obligations designated as fully paid certificates, which for the most part represent contractual conversions from installment certificates.

The Company is not subject to the reserve standard of the Investment Company Act of 1940, including the limitation of the maximum reserve rate to 3½%, which if used would require larger reserves. The Company's reserves are based upon rates which differ by series of certificates and also to a minor extent from year to year within each series. Reserves are maintained for fully paid certificates and advance payments at the stipulated rates. The rates of net cost to average monthly comparable reserve balances were as follows:

	Six Months Ended June 30, 1950	Year 1949
Increments on installment certificates	4.49%	4.59%
Interest on advance payments	2.58	2.68
Interest on fully paid certificates	4.04	4.04
Combined	4.39%	4.48%

At June 30, 1950 there were outstanding installment certificates with a maturity value of $417,265,000. Approximately $298,400,000 maturity value of these certificates had five and one-half or less certificate years remaining to their maturity. Of this amount certificates with a maturity value of $257,700,000 have a non-callable option to continue payments for a period of 10 years with a reduction in the rate of return of approximately ⅛ of 1%.

Prior to January 1, 1950, the Company provided increments to installment certificate reserves from income only upon completion of certificate years, but had appropriated $3,500,000 from surplus to improve its reserves. As of that date, the Company adopted the practice of providing for such increments from income as the certificates progress during the certificate years, and adjusted its reserves to the accrual basis by a charge of $3,001,648.94 to surplus. If the change had been made as of the beginning of 1949 the reserve costs for that year would have been increased by approximately $90,000.

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, June 30, 1950 (Cont.)

(B) The Company engaged an independent firm of actuaries, Joseph Froggatt & Co., Inc., of New York City, to make an analysis of the Company's installment certificates outstanding as to duration, and experience as to lapses, stretch-outs and surrenders thereon. They also made a study of the Company's earnings during the years 1940 through 1948, inclusive, which showed that the average net earnings (exclusive of losses from distribution of securities for affiliated companies, net earnings of wholly-owned subsidiaries, and profits and losses from sale of portfolio securities) was 4.535% on the Company's total assets. A comparison between the reserves computed by the actuaries on this 4.535% basis, the reserves actually maintained by the Company, and the reserves that would have been provided on the basis of a theoretical rate of improvement of 3½% (after allowances for unrealized cost reductions from delinquent payments and surrenders) is as follows:

(000 Omitted)

December 31:	*Face Amount of Installment Certificates Outstanding*	*Reserves For Actuaries Computation**	*Applicable Installment Reserves Maintained by Company*	*Reserves Computed on Theoretical 3½% Basis*
		(Before Exchange Discount on Canadian Amounts)		
1943.....	$648,149	$168,277	$160,477	$190,302
1944.....	593,584	183,529	176,358	203,973
1945.....	557,231	202,372	196,157	221,854
1946.....	530,202	222,883	217,163	241,050
1947.....	505,754	243,866	238,442	260,414
1948.....	476,114	258,678	254,054	273,204
1949.....	440,596	265,508	262,604	277,817

*Based on 4.535% rate.

No calculation was made at June 30, 1950, but the differences between the reserves maintained by the Company and those calculated on the foregoing bases would have decreased at least $4,500,000 due in part to the additional provision of $3,001,643.94 made by the Company during the six months ended that date.

The Company has developed sources of income other than its pure investment income from which it expects to receive additional net earnings. Such other sources of income include that realized from mortgage operations and management and underwriting fees received from affiliated and subsidiary companies.

The obligations for cash surrender values are specifically provided for in the exact terms of the certificates, and at June 30, 1950 were considerably less than the amount of certificate reserves maintained by the company.

2. Canadian Assets and Liabilities

The book value of net assets employed in Canada at June 30, 1950, aggregated $644,836.26 ($21,879,569.56 in assets less $21,234,733.30 in liabilities), after conversion into United States dollars, at the "official" buying rate of exchange, of all Canadian items except assets payable in United States funds. Canadian assets are realizable in United States currency only by permit from the Canadian Exchange Control Board.

Unrealized loss on exchange conversion amounted to $75,651.18 at June 30, 1950. Canadian operations are reflected in the income statement on a dollar for dollar basis. The reduction in provision for exchange loss of $37,372.95 was credited to 1950 income.

[fol. 2478]

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, June 30, 1950 (Cont.)

3. Deposits of Assets

Certain deposits of assets are maintained by the Company pursuant to requirements of various states and provinces, and a central deposit is maintained with the Treasurer of the State of Minnesota pursuant to Chapter 59, Minnesota Statutes, 1945, as amended, with respect to its liabilities, as defined in such Act, under certificates in the United States to the extent that such liabilities are not covered by deposits maintained with other states. As of June 30, 1950, the following assets were so deposited:

	Total	Central Depositary	Other States and Provinces
Cash	$ 620,237.47	$ 375,245.14	$ 244,992.33
Securities	43,708,676.43	17,375,636.08	26,333,040.35
Mortgages on real estate	213,321,755.16	91,294,699.55	122,027,055.61
Receivable from brokers for securities sold but not delivered	4,509.43		4,509.43
Total	$257,655,178.49	$109,045,580.77	$148,609,597.72

The foregoing amounts represent the book values of securities, exclusive of accrued interest and dividends receivable, and principal amounts of mortgages and other liens on real estate. The total deposit requirements at June 30, 1950 aggregated $249,573,350.42.

4. Cash

At June 30, 1950, the Company held funds collected from mortgagors for future payments of taxes and insurance, and agency collections for others in the aggregate amount of $4,877,742.41. Drafts issued by the Company which had not been presented for payment at that date aggregated $1,141,489.26. These amounts, aggregating $6,019,231.67, have been deducted from the cash balances and from the contra liability accounts.

5. Securities

The market values of listed and active securities at June 30, 1950, are based upon closing published market quotations at that date. The market values of unlisted and inactive securities are based upon the mean between quoted bid and asked prices, except that, in the absence of available quotations, twenty-three issues were priced at their book value of $9,679,414.67, which in the opinion of the Board of Directors was equivalent to fair market value. A list of securities is included as part of this report.

The Company does not adjust the carrying value of individual securities to market except in instances where the securities are in default or are not fully income producing. All securities owned at June 30, 1950 were fully income producing and not in default except for one issue of preferred stock, on which dividends were in arrears and which is carried at market value, or $196,632.00 less than cost.

The carrying values of securities at June 30, 1950 exceeded the market values thereof in the amount of $2,497,672.68, a decrease in unrealized depreciation of $53,773.18 from December 31, 1949.

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, June 30, 1950 (Cont.)

6. Asset Ratio Maintenance Requirements

Under conditions of its certificates, the Company is required to maintain qualified assets on designated liabilities thereunder, less loans thereon, in ratios ranging from 100% to 110%. Such designated liabilities consist of the cash values as set forth in the various certificates, exclusive of Paid Up certificates and exclusive of advance payments on Series "D" and "F" installment certificates, which in the opinion of legal counsel for the Company are not designated as liabilities subject to such asset ratio maintenance provisions.

In general, qualified assets required to be maintained shall consist of cash, government bonds, obligations issued or guaranteed in whole or in part by the United States or Canadian governments or by government-chartered institutions or agencies, first mortgages and first deeds of trust on improved real estate, and/or in assets of the kind which life insurance companies are permitted by the laws of the State of New York to hold or acquire. At June 30, 1950, the Company was required to maintain qualified assets in the amount of $253,618,773.44 (exclusive of certificate loans), and the Company had qualified assets at that date in excess of such amount.

7. Dividend Restrictions

According to the terms of the Series "G" certificates, no dividends shall be distributed to stockholders of the Company in any calendar year unless, not later than December 31, of the second preceding year, the Board of Directors shall have determined upon a credit to each Series "G" certificate which shall attain a new optional settlement value during such calendar year in an amount equal to at least one-half of one per cent of such new optional settlement value. The Board of Directors has not determined upon additional credits for Series "G" certificates attaining new optional settlement values subsequent to December 31, 1943, and therefore, the Company is presently restricted from paying dividends to its stockholders. Further, under sub-section (h) of Section 28 of the Federal Investment Company Act of 1940, the Company may be restricted from paying dividends to its stockholders.

8. Investments in Subsidiaries

Investments in subsidiary companies are recorded on the basis of the Company's equity in the book values of the subsidiaries' net assets. The book value of securities held by subsidiaries at June 30, 1950, was $964,990.27 in excess of market values at that date.

Credits to earned surplus for undistributed earnings of subsidiary companies aggregated $4,153,784.93 at June 30, 1950. The earned surplus of Investors Syndicate of America, Inc., one of the Company's subsidiaries, is restricted as to dividend payments during 1950 by reason of declaration of additional credits for that year at a rate lower than the minimum which could be declared without such restriction. The granting of additional credits during the six months ended June 30, 1950 at a rate necessary to remove this restriction would have increased expenses of that company by approximately $122,500.00 ($245,000.00 on an annual basis). Credits to earned surplus for undistributed earnings of that subsidiary aggregated $2,456,699.01 at June 30, 1950.

9. Contingent Mortgage Repurchase Agreement

The Company has endorsed, or agreed to repurchase under certain conditions, notes secured by first mortgages and first deeds of trust which it sells to its 96.8% owned subsidiary, Investors Syndicate Title & Guaranty Company, New York, or which said subsidiary may acquire pursuant to its trust agreements under certain series of such subsidiary's certificates sold prior to 1942. The notes so endorsed or which on June 30, 1950, were subject to such repurchase agreements aggregated $19,777,169.04, including $12,925,303.81 of FHA insured mortgages.

[fol. 2480]

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, June 30, 1950 (Concluded)

10. Contingent Liability Under Securities Act of 1933

The Company acts as principal underwriter for Investors Mutual, Inc. and Investors Stock Fund, Inc., open-end diversified management investment companies, and Investors Syndicate of America, Inc., a face-amount certificate company. In making sales of shares of stock and face amount certificates of those companies during the period from April 28 to May 23, 1949, inclusive, a prospectus was used which did not contain information as to the acquisition, on April 27, 1949, of the controlling shares of stock of Investors Diversified Services, Inc., by Alleghany Corporation from Mr. Bertin C. Gamble. With respect to such sales the Company may or may not be liable under Section 12 of the Securities Act of 1933 but it does not admit any such liability.

11. Premiums on Mortgages Sold To A Subsidiary Company

The Company follows the practice of charging costs incurred in connection with the acquisition of mortgages to expense as incurred. Mortgages are sold to subsidiary companies at a premium, which is credited to income in the year of sale. During the six months ended June 30, 1950 the Company may have realized a profit from such sales. One of the subsidiaries capitalizes such premiums and amortizes them over a ten-year period. The amount of premiums capitalized by the subsidiary at June 30, 1950 which were applicable to 1950 purchases aggregated $332,725.50. It was impracticable to determine the amount of inter-company profit, if any, included therein.

12. Income Taxes

By reason of the provisions of the Internal Revenue Code, as amended, the taxable income of the Company may be included in a consolidated federal income tax return with its domestic subsidiaries and the Company has elected to file on that basis. If unconsolidated federal income tax returns were filed, the federal income tax provision for the six months ended June 30, 1950 would have been approximately $1,210,000.00, as compared with the provision of $1,175,000.00, on a consolidated tax basis. The Bureau of Internal Revenue has not completed examination of federal income tax returns for years subsequent to 1945, and taxes for those years have not been finally determined.

Fees on construction loans are taxable in the period received. Income taxes applicable to such fees received but deferred on the books are allocated to deferred construction loan fees, and are charged to operations in the period in which the fees are taken into income. Income taxes applicable to fees deferred aggregated $152,000.00 at December 31, 1949 and $429,098.87 at June 30, 1950, resulting in an increase in the amount of the provision allocated to deferred income for the six month period of $277,098.87.

13. Gross Rates of Return on Investments

The average gross rates of return (exclusive of profit or loss on sales) realized by the Company on securities, mortgages, and certificate loans for the first six months of 1950 and the year 1949, based upon the monthly average book values of the investments, were as follows:

	First Six Months of 1950	Year 1949
Securities	3.89%	3.68%
Mortgages	4.78	4.58
Certificate loans	5.10	5.22
Combined average	4.62%	4.39%

INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, June 30, 1950

SUMMARY OF INVESTMENTS IN SECURITIES

Description	Market Value*
BONDS:	
Domestic bonds:	
U. S. Government and U. S. Government institutions	$ 5,195,317.50
Municipal	85,639.00
Railroad	1,752,777.50
Public utility	407,431.25
Industrial	10,504,303.42
Total domestic bonds	$17,945,468.67
Canadian bonds:	
Dominion Government and Dominion Government guaranteed	$ 896,053.86
Provincial	1,347,169.66
Municipal	701,175.69
Public utility and industrial	3,574,488.59
Total Canadian bonds	$ 6,518,887.80
Total bonds	$24,464,356.47
PREFERRED STOCKS:	
Domestic preferred stocks:	
Railroad	$ 1,817,291.00
Public utility	5,717,527.50
Industrial	9,403,480.50
Total domestic preferred stocks	$16,938,299.00
Canadian preferred stocks	76,209.81
Total preferred stocks	$17,014,508.81
COMMON STOCKS – Domestic	$ 355,819.32
Total investments in securities	$41,834,684.60

The market value of Canadian securities is based upon quotations in Canadian dollars, converted into United States dollars at the "official" buying rate of exchange discount.

[fol. 2482]

INVESTORS DIVERSIFIED SERVICES, INC.

Supplementary Information for the Six Months Ended June 30, 1950

Purchases and Sales of Securities

During the six months ended June 30, 1950, purchases of securities, other than United States Government bonds, aggregated $2,743,225.00. The aggregate cost of securities sold, other than United States Government bonds, was $10,664,552.56

Compensation Paid to Officers and Directors

During the six months ended June 30, 1950, three of the company's directors were also executive officers and they received no additional compensation for acting as directors. Regular directors' fees paid to the other directors during the six months ended June 30, 1950, were $3,749.94. No special compensation was paid to directors except to one director who was paid $900 for special advisory services.

Compensation to executive officers (excluding assistants to vice presidents, to secretary and to treasurer) aggregated $155,752.36 for the periods during which they held office during the six months ended June 30, 1950.

Copies of this Report are being made available to banks, financial agencies and institutions, for their files for ready reference. This material, under no circumstances, is to be used in the solicitation of applications for investment certificates.

IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT NO. K-174

INVESTORS DIVERSIFIED SERVICES, INC.

MINNEAPOLIS 2, MINNESOTA

Semi-Annual Report to Stockholders

June 30, 1951

[fol. 2484]

INVESTORS DIVERSIFIED SERVICES, INC.

ESTABLISHED 1894 as Investors Syndicate

Board of Directors

Joseph J. Anzalone	Alleghany Corporation, Cleveland, Ohio
Grady Clark	Investors Diversified Services, Inc., Minneapolis, Minnesota
Earl E. Crabb	Chairman, Minneapolis, Minnesota
Henry J. Gould	Brightwater Paper Company, Adams, Massachusetts
Robert W. Purcell	Chairman, Executive Committee, Cleveland, Ohio
Galen Van Meter	Vice Chairman, New York, New York

Principal Officers

Earl E. Crabb	President
Galen Van Meter	Chairman, Investment Committee
Harry C. Thompson	Treasurer

VICE PRESIDENTS

Harold K. Bradford	Government Relations
Harvey C. Carr	Government Relations
Grady Clark	General Sales Manager
C. Donald McGuiggan	Mortgage Operations
Clyde J. Moore	Corporate Affairs
James R. Ridgway	Mortgage Operations
Donald E. Ryan	Mortgage Operations
Norman B. Waag	Controller

Secretary	Auditor
Clyde J. Moore	Thomas L. Kenealy

Executive offices: Roanoke Building, Minneapolis, Minnesota
Independent Public Accountants: Peat, Marwick, Mitchell & Co., Minneapolis, Minnesota
Stock transferable at the offices of the Company, Minneapolis, Minnesota

INVESTORS DIVERS

Balance Shee

ASSETS (NOTES 2 AND 3)

QUALIFIED ASSETS (Note 4):			
CASH:			
On hand and in banks (Note 5)		$ 6,751,478	
Deposited with Central Depositary, states, and provinces		3,233,292	$ 9,984,768
SECURITIES (Notes 6 and 7):			
Bonds and notes—at amortized cost:	*Market Value*		
United States Government — direct obligations	$ 6,204,012	$ 6,300,869	
Other bonds and notes	15,575,323	15,793,535	
Preferred stocks—at average cost—less allowance for issue in arrears	18,519,014	20,450,215	42,544,61[illegible]
	$40,298,349		
MORTGAGES ON REAL ESTATE—Principal balances, less allowances (Notes 6 and 8):			
First mortgages:			
Insured or committed for insurance by Federal Housing Administration		$59,551,456	
Partially guaranteed by Veterans Administration		40,731,556	
Other first mortgages and first liens on real estate		92,139,560	
Second mortgages—fully guaranteed by Veterans Administration		7,706,363	200,128,935
LOANS TO CERTIFICATE HOLDERS—Not in excess of applicable certificate reserves (Note 6)—includes $767,565 on certificates issued by subsidiary			13,312,850
REAL ESTATE—at depreciated cost—acquired through foreclosure of mortgages			314,572
INTEREST AND DIVIDENDS RECEIVABLE ON QUALIFIED INVESTMENTS			1,157,549
DUE FROM BROKERS			5,546
Total qualified assets			$267,448,839
OTHER ASSETS:			
Investments in and receivables from subsidiary companies:			
Investments in common stock—at book value of underlying net assets, less allowance (Note 9)		$ 6,455,497	
Receivables		1,529,684	
Other investments in securities—at amortized cost—market value $652,428		610,016	
First mortgages on real estate—principal balances		703,275	
Unimproved real estate—at cost		104,079	
Other receivables—less allowances		1,348,594	
Equipment, and leasehold improvements—at cost less depreciation and amortization		893,764	
Other		233,492	11,878,401
			$279,327,240

See accompanying not

[fol. 2486]

FIED SERVICES, INC.

June 30, 1951

LIABILITIES (Note 2)

CERTIFICATE RESERVES (Notes 1 and 4):		
Installment certificates:		
Reserves to mature:		
Cash surrender values attained at dates of last completed certificate years	$221,734,536	
Reserve payments applicable to current certificate years	14,318,733	
Reserves to stabilize financing costs	10,240,315	
Other	1,719,646	
Payments made in advance of current certificate years' requirements and accrued interest thereon	9,900,460	
Fully paid certificates—reserves to mature	8,512,944	
Due to unlocated certificate holders	101,062	$266,587,898
CURRENT LIABILITIES, EXCLUSIVE OF CERTIFICATE LIABILITIES:		
Accounts payable:		
Commissions due to sales representatives	$ 337,518	
Subsidiary companies	60,318	
Sundry creditors	629,783	
Unearned interest on loans	158,283	
Undistributed collections from mortgagors and certificate holders	230,655	
Accrued taxes:		
Income (Note 10)	1,591,789	
Other	16,807	
Accrued sales representatives' incentive pay bonus	670,889	
Other accrued expenses	19,226	3,715,068
NOTE PAYABLE TO AFFILIATED COMPANY—subordinated		137,260
DEFERRED CREDIT—Mortgage construction loan fees (Note 11)		443,967
CAPITAL STOCK AND SURPLUS:		
Capital stock:		
Common Class "A" (Not preferred and non-voting)—$5 par—authorized, 260,000 shares; outstanding, 175,836.37 shares	$ 879,182	
Common—$5 par—authorized, 140,000 shares; outstanding, 114,908.16 shares	574,541	
Earned surplus, per accompanying statement (Notes 9, 12 and 13):		
Appropriated for contingencies	3,000,000	
Unappropriated	3,989,531	8,443,254
		$279,327,240

financial statements.

INVESTORS DIVERSIFIED SERVICES, INC.

Statement of Net Income
For the Six Months Ended June 30, 1951

GROSS INCOME:		
Investment and certificate servicing income:		
Interest on bonds, mortgages, and other loans	$ 5,561,263	
Cash dividends on stocks	420,578	
Installment certificate loading and servicing income (Note 14)	252,905	
Mortgage operations:		$ 6,234,746
Premiums on mortgages sold (includes $167,776 from subsidiaries)	$ 235,932	
Service fees (includes $370,176 from subsidiaries)	740,844	
Construction loan fee income	1,092,202	
Other mortgage income	194,004	
		2,262,982
Underwriting fees from subsidiary and affiliated companies		5,863,162
Management fees from subsidiary and affiliated companies		829,572
Other income (includes $74,858 collection fees from a subsidiary)		143,803
Total gross income		$ 15,334,065
COSTS AND EXPENSES:		
Provision for certificate reserves, less recoveries of $165,272 from lapses and surrenders (Note 1)	$ 5,835,172	
Mortgage branch office and agency expenses, including salaries of $488,128 and after charges to a subsidiary of $78,474	895,995	
Collection and sales agency expenses	456,264	
Commissions and incentive pay bonuses to sales representatives	3,939,636	
Other expenses, including salaries of $1,471,487 and after charges to subsidiaries of $351,787	2,199,112	
Total costs and expenses		13,326,179
OPERATING INCOME		$ 2,007,886
INCOME CHARGES, including $10,190 increase in provision for exchange discount		(10,755)
LOSS ON SALES OF INVESTMENTS		(92,766)
INCOME BEFORE PROVISION FOR INCOME TAXES		$ 1,904,365
PROVISION FOR INCOME TAXES:		
Federal normal and surtaxes (Note 10)	$ 430,000	
State	6,500	
	$ 436,500	
Plus net reduction of income taxes applicable to deferred construction loan fees (Note 10)	116,583	
		553,083
NET INCOME FOR THE PERIOD		$ 1,351,282

See accompanying notes to financial statements.

[fol. 2488]

INVESTORS DIVERSIFIED SERVICES, INC.

Statement of Earned Surplus
For the Six Months Ended June 30, 1951

UNAPPROPRIATED	
BALANCE AT BEGINNING OF THE YEAR	$ 1,895,748
NET INCOME FOR THE PERIOD—per accompanying statement	1,351,282
PROPORTIONATE SHARE OF EARNINGS OF SUBSIDIARY COMPANIES FOR THE PERIOD, less allowance of $100,000 for unrealized inter-company profit on mortgage transactions	742,508
BALANCE AT END OF THE PERIOD	$ 3,989,531
APPROPRIATED FOR CONTINGENCIES	
BALANCE AT BEGINNING AND END OF THE PERIOD	$ 3,000,000

See accompanying notes to financial statements.

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, June 30, 1951

1. Certificate Obligations and Reserves Thereon.

(A) The Company has outstanding eight series of installment certificates which were issued prior to 1941. The certificates provide for stipulated payments by the holder for periods ranging from ten to fifteen certificate years. The Company agrees to pay the face amount of the certificate at maturity or the specified cash surrender values designated in the certificates prior thereto. If a payment is not made when due the maturity date is extended by the period of delay and the certificate does not increase in value during such periods. Payments made in advance of due dates are interest bearing in accordance with the terms thereof. The rate of return to the holders varies according to series and is also affected by delays in making payments and terminations prior to maturity. The Company also has outstanding certain interest bearing obligations designated as fully paid certificates, which for the most part represent contractual conversions from installment certificates.

The Company is not subject to the reserve standards of the Investment Company Act of 1940, including the limitation of the maximum reserve rate to 3½%, which if used would require larger reserves. The Company's reserves are based upon rates which differ by series of certificates and also to a minor extent from year to year within each series. Reserves are maintained for fully paid certificates and advance payments at the stipulated rates. The rates of net cost to average monthly comparable reserve balances were as follows:

	Six Months Ended June 30, 1951	*Year 1950*
Increments on installment certificates	4.34%	4.46%
Interest on advance payments	2.61	2.53
Interest on fully paid certificates	4.02	3.99
Combined	4.26%	4.37%

At June 30, 1951 there were outstanding installment certificates with a maturity value of $366,417,246. Approximately $253,000,000 maturity value of these certificates had four and one-half or less certificate years remaining to their maturity. Of this amount certificates with a maturity value of $227,000,000 have a noncallable option to continue payments for a period of 10-years with a decrease in the rate of cost of approximately ⅛ of 1%.

(B) The Company engaged an independent firm of actuaries, Joseph Froggatt & Co., Inc., of New York City, to make an analysis of the Company's installment certificates outstanding as to duration, and experience as to lapses, stretch-outs and surrenders thereon. They also made a study of the Company's earnings during the years 1940 through 1943, inclusive, which showed that the average net earnings (exclusive of net earnings or losses from loading and from distribution of securities for affiliated companies, net earnings of wholly-owned subsidiaries, and profits and losses from sale of portfolio securities) was 4.535% on the Company's total assets. A comparison between the reserves computed by the actuaries on this 4.535% basis, the reserves actually maintained by the Company, and the approximate reserves that would have been provided on the basis of a theo-

[fol. 2490]

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, June 30, 1951 (Cont.)

retical rate of improvement of 3½% (after allowances for unrealized cost reductions from delinquent payments and surrenders) is as follows:

(000 Omitted)

December 31:	*Face Amount of Installment Certificates Outstanding*	*Reserves per Actuaries Computation*(1)*	*Applicable Installment Reserves Maintained by Company*	*Approximate Reserves Computed on Theoretical 3½% Basis(1)*
		(Before Exchange Discount on Canadian Amounts)		
1943.....	$648,149	$168,277	$160,477	$190,302
1944.....	593,584	183,529	176,358	208,973
1945.....	557,231	202,372	196,157	221,854
1946.....	530,202	222,883	217,163	241,050
1947.....	505,754	243,866	238,442	260,414
1948.....	476,114	258,676	254,054	273,204
1949.....	440,596	265,509	262,604	277,817
1950.....	394,605	258,130	258,649	268,122

**Based on 4.53% rate.*

(1)These calculations were not made at June 30, 1951.

The Company has developed sources of income other than its pure investment income from which it expects to receive additional net earnings. Such other sources of income include that realized from mortgage operations and management and underwriting fees received from affiliated and subsidiary companies.

The obligations for cash surrender values are specifically provided for in the exact terms of the certificates, and at June 30, 1951 were considerably less than the amount of certificate reserves maintained by the Company.

2. CANADIAN ASSETS AND LIABILITIES.

The book value of net assets employed in Canada at June 30, 1951 aggregated $723,864 ($21,528,730 in assets less $20,804,866 in liabilities), after conversion into United States dollars, at the buying rates of exchange at that date, of all Canadian items except assets payable in United States funds. Canadian assets are realizable in United States currency only by permit from the Canadian Exchange Control Board.

Unrealized loss on exchange conversion amounted to $48,258 at June 30, 1951. Canadian operations are reflected in the income statement on a dollar for dollar basis, except that adjustments of the unrealized loss on exchange conversion are made by charge or credit thereto.

3. DEPOSITS OF ASSETS.

Certain deposits of assets are maintained by the Company pursuant to requirements of various states and provinces, and a central deposit is maintained with the Treasurer of the State of Minnesota pursuant to Chapter 59, Minnesota Statutes, 1945, as amended, with respect to its liabilities, as defined in such Act, under certificates in the United

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, June 30, 1951 (Cont.)

States to the extent that such liabilities are not covered by deposits maintained with other states. As of June 30, 1951, the following assets were so deposited:

(After exchange discount on Canadian amounts)

	Deposits			
	At Book Value	*At Values Prescribed Under Agreements*	*Required Deposits*	*Excess*
Deposits to meet certificate liability requirements:				
States and Provinces	$130,585,394	$130,575,661	$127,359,649	$ 3,216,012
Central Depositary	118,240,417	116,973,855	106,037,837	10,936,018
Total	$248,825,811	$247,549,516	$233,397,486	$14,152,030
Deposits with States and Provinces to meet licensing requirements	225,000	225,000	225,000	
Total	$249,050,811	$247,774,516	$233,622,486	$14,152,030

The deposits consisted of cash, $3,233,292, securities at book value of $42,522,377, mortgages with unpaid balances of $196,358,552, loans secured by certificates issued by a subsidiary of $737,004, investments in subsidiaries at book value of $6,194,040, and amounts due from brokers for securities sold of $5,546.

The above deposits included assets with an aggregate book value of $7,470,029 which were qualified under the terms of the deposit agreements but not under the conditions of certificates. The difference of $1,276,295 between the book values of assets deposited and the values of such assets on bases prescribed under conditions of deposit agreements, consists principally of the excess of the book value of investments in common stocks of subsidiaries, which for purposes of valuation under the central deposit agreement are included at 80% of the Company's equity in net assets of the companies.

4. REQUIREMENTS AS TO QUALIFIED ASSETS.

Under conditions of its certificates, the Company is required to maintain qualified assets on designated liabilities thereunder, less loans thereon, in ratios ranging from 100% to 110%. Such designated liabilities consist of the cash values as set forth in the various certificates, exclusive of Paid Up certificates and exclusive of advance payments on Series "D" and "F" installment certificates, which in the opinion of legal counsel for the Company are not designated as liabilities subject to such asset ratio maintenance provisions.

In general, qualified assets required to be maintained shall consist of cash, government bonds, obligations issued or guaranteed in whole or in part by the United States or Canadian governments or by government-chartered institutions or agencies, first mortgages and first deeds of trust on improved real estate, and/or assets of the kind which life insurance companies are permitted by the laws of the State of New York to hold or acquire. At June 30, 1951, the Company was required to maintain qualified assets in the amount of $239,025,191 (exclusive of certificate loans), and as indicated in

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INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, June 30, 1951 (Cont.)

the accompanying balance sheet, the Company had qualified assets at that date in excess of such amount. The nature of the qualified assets and the amount thereof are not subject to the provisions of Section 28 of the Investment Company Act of 1940.

5. CASH.

At June 30, 1951, the Company held funds collected from mortgagors for future payments of taxes and insurance, and agency collections for others in the aggregate amount of $4,834,892. Drafts issued by the Company which had not been presented for payment at that date aggregated $1,565,877. These amounts, aggregating $6,400,769, have been deducted from the cash balances and from the contra liability accounts.

6. GROSS RATES OF RETURN ON INVESTMENTS.

The average gross rates of return (exclusive of profit or loss on sales) realized by the Company on securities, mortgages, and certificate loans for the designated periods, based upon the monthly average book values of the investments, were as follows:

	Six Months Ended June 30, 1951	Year 1950
Securities	4.00%	3.99%
Mortgages	4.81	4.73
Certificate Loans	5.14	5.14
Combined	4.54%	4.76%

7. SECURITIES.

The market values of listed and active securities are based upon closing published market quotations. The market values of unlisted and inactive securities are based upon the mean between quoted bid and asked prices, except that in the absence of available quotations, 30 issues were priced at their amortized cost of $14,239,853 and one issue in arrears as to dividend payments at $73,737 less than cost, which in the opinion of the Board of Directors represented fair market values. The market value of Canadian securities is based upon quotations in Canadian dollars, converted into United States dollars at the buying rate of exchange. A list of securities is included as part of this report.

The Company does not adjust the carrying value of individual securities to market except in instances where the securities are in default or are not fully income producing. All securities owned at June 30, 1951 were fully income producing and not in default except for one issue of preferred stock on which dividends were in arrears and which was carried at $73,737 less than cost. The carrying values of securities at June 30, 1951 exceeded the market values thereof in the amount of $2,203,860, an increase in unrealized depreciation of $556,635 from December 31, 1950.

Premiums and discounts on bonds are amortized on a yield basis to maturity.

8. MORTGAGES AND MORTGAGE COMMITMENTS.

Mortgages are carried at principal balances less unamortized discounts and allowances of $238,516. Commitments in respect of mortgages at June 30, 1951 aggregated approximately $46,500,000, including $30,068,824 on which partial disbursements had been made.

The aggregate principal balances of mortgages of the self-amortizing type held at June 30, 1951 were $159,896,502.

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, June 30, 1951 (Cont.)

The principal balances of mortgages in respect of which principal or interest payments were past due for more than three months at June 30, 1951, were $4,726,848. Of this amount $1,817,074 represented mortgages insured by the Federal Housing Administration or partially or fully guaranteed by the Veterans Administration.

9. Investments In Subsidiaries.

Investments in subsidiary companies are recorded on the basis of the Company's equity in the book values of the subsidiaries' net assets, less an allowance of $600,000 for unrealized inter-company profit on mortgage transactions. The book value of securities held by subsidiaries at June 30, 1951, was $1,315,206 in excess of market values.

As in previous years, no provision has been made in the financial statements for income taxes which would accrue if undistributed profits of subsidiaries were paid as dividends to the Company. Consolidated Federal income tax returns have been filed by the Company and its domestic subsidiaries for all years subsequent to 1941 and no tax is payable on the dividends received in years in which such returns are filed. Also, a credit is allowed against the tax payable on dividends received from Canadian subsidiaries for Canadian income taxes paid.

Credits to earned surplus for undistributed earnings of subsidiary companies aggregated $4,822,823 at June 30, 1951. The earned surplus of Investors Syndicate of America, Inc., one of the Company's subsidiaries, is restricted as to dividend payments during 1951 by reason of declaration of additional credits for that year at a rate lower than the minimum which could be declared without such restriction. The granting of additional credits at a rate necessary to remove this restriction would have increased expenses of that company for the six months ending June 30, 1951 by approximately $141,000 ($282,000 on an annual basis). Credits to earned surplus for undistributed earnings of that subsidiary aggregated $2,670,662 at June 30, 1951.

10. Income Taxes.

For the calendar year 1950 the Company and its domestic subsidiaries filed a consolidated federal income tax return. Provision for federal income taxes in the accompanying statements are based on filing a consolidated return for the year 1951. On a separate return basis the federal income tax provision would have been approximately $30,000 less than the provision on a consolidated basis. No provision was necessary for excess profits tax on either a consolidated or separate return basis. The Bureau of Internal Revenue has not completed examination of federal income tax returns for years subsequent to 1948, and taxes for those years have not been finally determined.

Income taxes applicable to deferred construction loan fees (see Note 11) aggregated $298,417 at June 30, 1951 and $415,000 at December 31, 1950, resulting in a net decrease in the amount of the provision allocated to deferred income for the six months ended June 30, 1951 of $116,583.

11. Deferred Construction Loan Fees.

Fees on construction loans are subject to income taxes in the period received whereas on the book basis they are taken into income as earned. Income taxes applicable to such fees received but deferred on the books are allocated to deferred construction loan fees,

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, June 30, 1951 (Concluded)

and are charged to operations in the period in which the fees are taken into income. Fees deferred at June 30, 1951 are shown net after reduction of $298,417 of income taxes applicable thereto.

12. DIVIDEND RESTRICTIONS.

Undistributed earnings of subsidiaries included in surplus aggregating $4,822,823 at June 30, 1951 are not available for dividends until paid to the Company.

According to the terms of the Series "G" certificates, no dividends shall be distributed to stockholders of the Company in any calendar year unless, not later than December 31, of the second preceding year, the Board of Directors shall have determined upon a credit to each Series "G" certificate which shall attain a new optional settlement value during such calendar year in an amount equal to at least one-half of one per cent of such new optional settlement value. The Board of Directors has not determined upon additional credits for series "G" certificates attaining new optional settlement values subsequent to December 31, 1943, and therefore, the Company is presently restricted from paying dividends to its stockholders. Payment of additional credits on Series "G" certificates at the rate necessary to remove the dividend restriction would have increased expenses for the six months ended June 30, 1951 by approximately $130,000.

Under sub-section (h) of Section 28 of the Federal Investment Company Act of 1940, the Company may be restricted from paying dividends to its stockholders.

13. CONTINGENT MORTGAGE REPURCHASE AGREEMENT.

The Company has endorsed, or agreed to repurchase under certain conditions, notes secured by first mortgages and first deeds of trust which it sells to its 98.8% owned subsidiary, Investors Syndicate Title & Guaranty Company, New York, or which said subsidiary may acquire pursuant to its trust agreements under certain series of such subsidiary's certificates sold prior to 1942. The notes so endorsed or which on June 30, 1951, were subject to such repurchase agreements aggregated $18,947,800 including $13,383,257 of FHA insured mortgages.

14. SERVICE FEES AND LOADING CREDITS ON INSTALLMENT CERTIFICATES.

Service fees and loading credits on installment certificates are taken into income as received. The service fees represent charges made to certificate holders on installment payments made on less than an annual basis to cover the additional costs involved in making the collections, additional record keeping, and the loss of the use of funds. The loading credits, for the most part, represent amounts deducted from installment payments to cover annual costs incident to servicing the certificates.

15. ANTI-TRUST SUIT.

The Company and four of its subsidiaries are defendants in a suit brought by the Federal government on April 26, 1951 under Acts commonly known as the Clayton and Sherman anti-trust laws in connection with the placing of hazard insurance on mortgaged properties. This action, among other things, seeks to enjoin the companies from receiving any compensation from the writing, placing, or selling of hazard insurance. Gross insurance commissions received by the Company and its subsidiaries aggregated $198,250 in the six months ended June 30, 1951.

INVESTORS DIVERSIFIED SERVICES, INC.

Investments In Securities, June 30, 1951

SUMMARY OF INVESTMENTS IN SECURITIES

Description	Market Value*
BONDS AND NOTES:	
Domestic:	
U. S. Government – direct obligations	$ 6,204,012
U. S. Government chartered institutions	214,929
Financial institutions	4,416,345
Industrial	5,351,208
Public utility	293,663
Transportation	256,450
Canadian:	
Dominion Government and Dominion Government guaranteed	1,412,548
Provincial	110,742
Municipal	656,670
Financial institutions	1,550,683
Industrial	1,005,258
Public utility	388,844
Transportation	128,457
Total bonds and notes	$22,019,789
PREFERRED STOCKS:	
Domestic:	
Financial institutions	$ 401,825
Industrial	10,699,594
Public utility	4,440,197
Transportation	2,998,997
Total preferred stocks	$18,540,613
COMMON STOCKS – Domestic	$ 390,373
Total investment in securities	$40,950,775
CLASSIFICATION IN ACCOMPANYING BALANCE SHEET:	
Under qualified assets	$40,298,349
Under other assets	652,426
Total, as above	$40,950,775

[fol. 2496]

INVESTORS DIVERSIFIED SERVICES, INC.

Supplementary Information for the Six Months Ended June 30, 1951

PURCHASES AND SALES OF SECURITIES.

During the six months ended June 30, 1951, purchases of securities, other than United States Government bonds, aggregated $7,287,204. The aggregate cost of securities sold, other than United States Government bonds, was $5,916,877.

COMPENSATION PAID TO OFFICERS AND DIRECTORS.

During the six months ended June 30, 1951, three of the Company's directors were also executive officers and they received no additional compensation for acting as directors. Regular directors' fees paid to the other directors during the six months ended June 30, 1951, were $5,625. Special compensation of $600 was paid to a director for investment advisory services.

Compensation to executive officers (excluding assistants to vice presidents, to secretary and to treasurer) aggregated $180,930 for the periods during which they held office during the six months ended June 30, 1951.

Copies of this Report are being made available to banks, and financial agencies and institutions, for their files for ready reference. This material, under no circumstances, is to be used in the solicitation of applications for investment certificates.

[fol. 2497]

IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT NO. K-175

The following information was obtained from Mr. Norman Weeg of Investors Diversified Services, Inc.

1949 quarterly earnings: (combined earnings of IDS and subsidiaries)

Quarters	Total Earnings	Earnings Per Share
First	- $ 1,297	- $ .01
Second	432,249	1.65
Third	410,112	1.41
Fourth	474,422	1.63

[fol. 2498]

IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT No. K-176

October 10, 1955

Combined earnings of I. D. S. and subsidiary companies as dictated by Mr. Norman Waag
From Investors Diversified Services, Inc.

Last Quarter 1949	$ 474,422	$1.60 per share (old) .32 per share (new)
First Quarter 1950	639,041	2.20 per share (old) .44 per share (new)
First Quarter 1954	2,021,657	6.95 per share (old) 1.39 per share (new)

INVESTORS DIVERSIFIED SERVICES, INC.
COMPARATIVE BALANCE SHEET, DECEMBER 31, 1949
ASSETS

FINAL

	DECEMBER 31, 1949		DEC. 31, 1948
CASH AND INVESTMENTS			
Cash on Hand and In Banks	$ 8,189,653.92		
Less: Funds Held in Spec. Accounts	$ 3,053,905.32		
Cash in Transit	545,349.13		
Drafts Payable	1,110,389.69		
Total Deductions	$ 4,709,644.14	$ 3,480,009.78	$ 3,712,737.10
Cash in Special Depositaries		1,381,169.68	5,226,831.65
Investment in Securities	$ 53,986,940.37		
Less: Reserve for Possible Future Losses	295,144.50	53,691,795.87	54,234,721.00
F.H.A. Insured First Mortgages	$ 78,381,957.82		
Less: Undisbursed Mortgage Funds	5,582,593.35	72,799,364.47	96,077,360.03
G.I. Partially Guaranteed First Mtges.	$ 31,405,531.09		
Less: Undisbursed Mortgage Funds	127,585.55	31,277,945.54	24,859,256.22
G.I. Fully Guaranteed Mortgages	$ 7,959,084.05		
Less: Undisbursed Mortgage Funds	1,556.77	7,957,527.28	5,146,427.89
Other First Mortgages on Real Estate	$131,451,467.53		
Less: Reserve	$ 40,063.66		
Undisbursed Mortgage Funds	34,741,330.58		
Total Deductions	$ 34,781,394.24	96,670,073.29	74,393,690.99
Contracts for Sale of Real Estate	$ 107,366.87		
Less: Reserve	65.11	107,301.76	119,270.93
Certificate Loans		10,853,254.11	9,068,711.44
Collateral Loans		502,393.21	439,566.51
Leasehold Real Estate		28,355.01	37,665.28
Other Real Estate	$ 321,543.64		
Less: Accumulated Depreciation	$ 9,804.33		
Writedown	768.61		
Total Deductions	$ 10,572.94	310,970.70	379,136.43
Accrued Interest & Dividends Receivable		1,511,378.74	1,352,191.91
Total Cash and Investments		$280,653,539.44	$275,087,607.45
OTHER ASSETS			
Investment in Capital Stock of Subsidiary Companies		$ 5,284,959.39	$ 4,434,051.63
Accounts Receivable from Subsidiary Companies		725,773.63	1,261,195.99
Notes Receivable from Subsidiary Companies	$ 1,093,247.50		
Accrued Interest	6,076.91	1,099,324.41	1,164,927.04
Mortgage Receivable from Subsidiary Company		-0-	165,030.40
Second Mortgages	$ 1,994.03		
Less: Writedown	1,993.03	1.00	1.00
Cash Surrender Value - Life Insurance		51,390.19	49,700.03
Sundry Accounts Receivable		934,272.95	637,129.35
Furniture and Fixtures	$ 829,720.55		
Less: Accumulated Depreciation	318,452.95	511,267.60	437,474.99
Leasehold Improvements	$ 37,635.65		
Less: Accumulated Amortization	5,365.73	32,269.92	19,323.65
Prepaid Expenses and Supply Inventories		165,990.15	174,508.29
Total Other Assets		$ 8,803,053.24	$ 8,543,344.60
Total Assets		$289,456,592.68	$283,631,152.05

Investors Diversified Services, Inc., has a contingent liability to I.B.T. & G. at Dec. 31, 1949 for mortgages endorsed or subject to repurchase agreement amounting to $20,217,455.72 which $12,327,517.51 were FHA insured mortgages.

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General Accounting Department
March 28, 1950

INVESTORS DIVERSIFIED SERVICES, INC.
COMPARATIVE BALANCE SHEET, DECEMBER 31, 1949
LIABILITIES

	December 31, 1949	December 31, 1948
CERTIFICATE RESERVES		
Installment Certificates:		
Cash Surrender Values Attained	$234,753,638.13	$228,017,307.55
Interim Payments	16,767,621.12	18,050,896.34
Certificate Reserves	5,395,015.57	5,673,256.70
Certificate Payments made in Advance	13,220,368.38	15,049,696.36
Additional Credits - Series "C"	278,089.94	286,434.79
Reserve on Suspended Accounts with Attained Cash Surrender Value	281,371.08	60,801.90
Special Certificate Reserve	3,500,000.00	2,374,355.10
Reserve for Adjustment due to Change in mode of Payment	635,000.00	480,000.00
Reserve for Death & Disability refunds	175,012.59	180,250.36
Reserve for Reinstatements	10,000.00	10,000.00
Total Installment Certificate Reserves	$273,016,116.81	$270,182,999.10
Fully Paid Certificates:		
Paid Up Certificates	$ 4,782,920.60	$ 4,974,120.57
Optional Settlements	3,642,616.84	3,958,317.32
Coupon Certificates	442,316.39	469,021.38
Unlocated Certificate Holders	75,524.79	69,079.94
Total Fully Paid Certificate Reserves	$ 8,943,378.82	$ 9,470,539.21
Total Certificate Reserves	$283,959,495.63	$279,653,538.31
OTHER LIABILITIES		
Commissions Payable - Representatives	$ 231,634.66	$ 194,914.81
Notes Payable	137,259.95	-0-
Vouchers Payable	242,278.56	104,408.78
Accounts Payable to Subsidiary Companies	73,058.85	56,997.21
Sundry Accounts Payable	221,580.87	309,736.91
Accrued Taxes and Fees	591,357.29	106,267.89
Accrued Incentive Pay Bonus	279,047.46	212,327.97
Reserve for Deferred Expense	11,326.95	12,724.48
Suspense	61,205.53	170,635.97
Total Other Liabilities	$ 1,848,750.12	$ 1,168,014.02
DEFERRED INCOME		
Deferred Mortgage Construction Loan Fees	$ 569,358.26	$ -0-
Interest Collected in Advance on Certificate Loans	148,758.03	120,110.87
Rent Collected in Advance on Leasehold	202.89	217.91
Interest Collected in Advance on Mortgages	23,150.00	12,303.88
Deferred Income - Surety Bond Premiums	11,171.10	11,100.81
Total Deferred Income	$ 753,640.28	$ 152,733.47
Total Liabilities and Reserves	$286,561,886.03	$280,974,285.80
CAPITAL STOCK AND SURPLUS		
Capital Stock, Common $5.00 Par Value	$ 574,540.80	$ 574,540.80
Capital Stock, Common, Class "A" $5.00 Par Value	879,181.85	879,181.85
Reserve for Contingencies	1,442,984.00	1,203,143.61
Earned Surplus	Nil	Nil
Total Capital Stock and Surplus	$ 2,896,706.65	$ 2,656,866.25
TOTAL	$289,458,592.68	$283,631,152.06

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INVESTORS DIVERSIFIED SERVICES, INC.
STATEMENT OF NET INCOME AND EARNED SURPLUS

GROSS INCOME

		Month of December		Twelve Months Ending December 31,		Increase or (Decrease)
		1949	1948	1949	1948	
INVESTMENT, SERVICING & MANAGEMENT						
1	Int. on Mtge. Loans	$ 858,100.72	$ 743,078.98	$ 9,171,054.37	$ 8,628,021.78	$ 543,032.59
2	Interest on Bonds	98,708.63	82,055.03	1,185,940.73	1,009,756.61	176,184.12
3	Int. on Cert. Loans	46,980.35	44,474.97	548,628.26	463,085.49	85,542.77
4	Miscellaneous Int.	5,624.41	7,558.26	70,014.29	79,706.89	(9,692.60)
5	Dividends on Stock	123,390.83	119,990.82	982,340.13	1,059,295.69	(76,955.56)
6	Dividends on Stock of Sub. Cos.	105,000.00	-0-	165,000.00	-0-	165,000.00
7	Corp. Financing Fees	-0-	-0-	146,448.79	69,000.00	77,448.79
	Mortgage Service Fees:					
8	F.H.A. Mtges. Owned	350.81	3,797.95	15,409.84	34,240.59	(18,830.75)
9	Subsidiary Cos.	45,314.92	39,117.25	488,828.70	405,013.98	83,814.72
10	Non-affiliated Cos.	28,987.65	13,474.13	239,154.77	113,214.90	125,939.87
	Premiums on Mtges. Sold:					
11	Subsidiary Cos.	38,298.12	27,934.42	447,537.61	563,829.46	(116,291.85)
12	Non-affiliated Cos.	27,535.56	29,642.96	185,060.25	60,521.28	124,538.97
13	Other Mtge. Income	214,864.72	60,659.67	2,788,701.92	727,444.70	2,061,257.22
14	Gross Income from R.E.	367.85	550.84	2,246.98	2,873.90	(626.92)
15	Cert. Servicing Income	49,101.80	58,600.39	574,264.73	665,005.08	(90,740.35)
16	Trans. & Duplicate Fees	164.50	342.00	3,268.35	4,148.00	(879.65)
17	Cert. Collection Fees From I.S.A.	11,242.05	9,906.90	123,881.05	95,641.20	18,239.85
18	Coll.Fees-Ins. Prems	2,426.64	595.17	13,123.56	740.94	12,382.62
19	Management Fees from Subs. & Managed Cos.	106,367.60	77,125.58	916,400.05	836,540.18	80,859.87
20	Miscellaneous Income	5,868.85	17,201.20	20,212.08	17,201.20	3,011.68
21	TOTAL	$1,768,696.01	$1,336,126.52	$18,077,517.26	$14,834,281.87	$3,243,235.39
UNDERWRITING FEES FROM:						
22	I.S. of America	$ 398,816.62	$ 436,242.06	$ 4,473,002.30	$ 4,613,783.23	$ (140,780.93)
23	Investors Mutual	330,662.41	243,874.00	2,946,182.52	2,255,020.10	691,162.42
24	Investors Stock Fund	18,724.92	14,267.05	209,008.25	157,568.75	51,439.50
25	Investors Sel. Fund	1,256.83	-0-	1,256.83	10,429.79	(9,172.96)
26	TOTAL	$ 749,460.78	$ 694,383.11	$ 7,629,449.90	$ 7,036,801.87	$ 592,648.03
27	TOTAL-GROSS INCOME	$2,518,186.79	$2,030,509.63	$25,706,967.16	$21,871,083.74	$3,835,883.42

General Accounting Department
March 28, 1950

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[fol. 2501]

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INVESTORS DIVERSIFIED SERVICES, INC.
STATEMENT OF NET INCOME AND EARNED SURPLUS

		Month of December		Twelve Months Ending December 31,		Increase or (Decrease)
		1949	1948	1949	1948	
	INVESTMENT, SERVICING AND MANAGEMENT					
30	Accr. to Reserve	$1,173,441.03	$1,113,912.66	$12,209,930.38	$11,650,868.93	$ 559,061.45
31	Less Est Recoveries on Lapses & Surrenders	16,031.97	5,153.03	188,419.17	144,283.38	44,135.79
32	Remainder Net Cost	$1,155,409.06	$1,108,759.63	$12,021,511.21	$11,505,585.55	$ 515,925.66
33	Prov. for Change in Payment Method	100,000.00	30,000.00	133,000.00	30,000.00	103,000.00
34	Int. on Advance Pmts.	28,248.33	35,014.29	371,676.24	431,763.73	(60,087.49)
35	Int. on Pd. Up Cert.	17,280.12	17,258.51	205,975.69	209,262.72	(3,287.03)
36	Int. on Cyt. Settlements	11,342.64	11,815.62	147,892.99	156,809.40	(8,916.41)
37	Int. on Coupon Cert.	1,041.93	1,047.50	13,082.94	14,084.51	(1,001.57)
38	Int. on Single Pmt. Cert.	-0-	-0-	-0-	127.69	(127.69)
39	Int. on Add'l. Cr. - "O"	819.80	838.82	7,647.50	7,696.91	(49.41)
40	Int. on Misc. Cert.	(26.25)	(288.38)	176.80	712.40	(535.60)
41	Comm. Paid I.D.S. Cert.	(1,698.20)	(2,468.14)	2,272.27	3,635.83	(1,363.56)
42	Coll. Agency Exp. Prop.	23,352.13	22,268.15	256,528.09	237,944.87	18,583.22
43	Coll. Fees Paid IBC, Ltd.	481.80	453.60	6,585.20	7,307.55	(721.35)
44	Depr. On Real Estate	718.28	10.71	10,114.66	1,060.11	9,054.55
45	Other Real Estate Exp.	2,399.65	2,780.61	36,854.41	5,758.66	31,095.75
46	Int. Chgd. Off Fclsd. Mtge.	-0-	6,331.97	1,548.65	6,404.21	(4,855.56)
47	Mtge. Agency Expenses	370,687.42	204,528.63	2,205,997.24	1,790,004.82	415,992.42
48	Mortgage Advertising	2,676.65	997.76	2,676.65	997.76	1,678.89
49	Prov. for Mtge. Reserves	30,227.77	(16,042.48)	30,496.90	(4,062.87)	34,559.77
50	Collection & Exchange	2,605.07	1,768.47	15,211.59	14,462.04	749.55
51	Depositary Fees	6,759.70	(6,995.72)	65,759.70	59,004.28	6,755.42
52	Int. on Notes Payable	-0-	-0-	-0-	30,200.28	(30,200.28)
53	Misc. Interest Expense	.58	8.83	104.71	425.34	(320.63)
54	Death & Discb. Refund Prov.	1,413.08	1,605.46	16,735.48	18,819.49	(2,084.01)
55	Refunds on Canc. Cert.	92.66	4.87	1,085.09	640.12	444.97
56	Gen'l. & Adm. Exp. Prop.	274,255.35	188,291.44	2,262,225.47	1,930,239.76	331,985.71
57	TOTAL	$2,028,296.59	$1,608,990.15	$17,837,162.48	$16,479,888.16	$1,357,274.32
	UNDERWRITING FEES					
58	Comm. Pd. IDA Cert.	$ 250,724.18	$ 272,752.58	$ 2,800,825.44	$ 2,870,777.83	$ (69,952.39)
59	Comm. Pd. IM Stock	204,613.81	151,784.86	1,845,542.66	1,396,969.91	448,572.75
60	Comm. Pd. Stk. Fund Stk.	11,615.34	8,715.66	129,952.76	96,544.71	33,408.05
61	Comm. Pd. Sel. Fund Stk.	945.40	-0-	945.40	7,858.47	(6,913.07)
62	Prov. for Incentive Pay	46,742.14	23,003.22	305,744.26	237,504.33	68,239.93
63	Advertising	1,616.48	3,511.26	57,920.49	76,290.03	(18,369.54)
64	Sales Prom. & Convention	29,708.45	39,492.29	145,193.15	152,112.97	(6,919.82)
65	Prov. for Res. for Bad Debts. Repr.	(7,890.88)	(2,166.04)	29,102.96	22,263.62	6,839.34
66	Sales Agency Coll. Fees & Expense - Prop.	18,772.63	22,042.92	233,706.71	207,367.11	26,339.60
67	Regional Managers Exp.	14,317.13	19,636.17	173,165.68	160,667.26	12,498.42
68	Gen'l. & Adm. Exp. - Prop.	94,049.27	65,380.21	632,303.80	558,502.54	73,801.26
69	TOTAL	$ 665,213.95	$ 604,153.13	$ 6,354,403.31	$ 5,786,858.78	$ 567,544.53
70	TOTAL COSTS & EXPENSES	$2,693,510.54	$2,213,143.28	$24,191,565.79	$22,266,746.94	$1,924,818.85

[fol. 2502]

INVESTORS DIVERSIFIED SERVICES, INC.
STATEMENT OF NET INCOME AND EARNED SURPLUS

	Month of December		Twelve Months Ending December 31,		Increase or (Decrease)
	1949	1948	1949	1948	
NET OPERATING INCOME					
75 Investment, Servicing & Management	$ (259,600.58)	$ (272,863.63)	$ 240,354.78	$(1,645,606.29)	$1,885,961.07
76 Underwriting Fees	84,246.83	90,229.98	1,275,046.59	1,249,943.09	25,103.50
77 INCOME FROM OPERATIONS	$ (175,353.75)	$ (182,633.65)	$1,515,401.37	$ (395,663.20)	$1,911,064.57
INCOME CHARGES - NET					
80 Provision for Canadian Exchange	$ (3,836.49)	$ -0-	$ 113,024.13	$ -0-	$ 113,024.13
81 Sundry Income Credits - Net	(7.77)	4,212.54	104.76	871.14	(766.38
82 Adj. of Prior Yrs. Income & Exp.	-0-	-0-	-0-	(10,980.93)	10,980.93
83 TOTAL	$ (3,844.26)	$ 4,212.54	$ 113,128.89	$ (10,109.79)	$ 123,238.68
84 INCOME BEFORE PROFIT OR LOSS ON INVESTMENT TRANSACTIONS AND PROV. FOR INCOME TAXES	$ (171,509.49)	$ (186,846.19)	$1,402,272.48	$ (385,553.41)	$1,787,825.89
REALIZED PROFIT ON INVESTMENT TRANSACTIONS					
85 Bonds and Securities	$ (52,348.04)	$ 42,542.73	$ (423,505.76)	$ (513,325.28)	$ 91,819.52
86 Real Estate	575.44	(2,303.92)	5,176.54	(5,136.74)	10,313.28
87 TOTAL	$ (51,772.60)	$ 40,238.81	$ (418,329.22)	$ (520,462.02)	$ 102,132.80
Less Prov. for Inv. Reserves					
88 Bonds and Securities	$ (925.00)	$ 36,717.26	$ 258,427.24	$ (515,325.28)	$ 773,752.52
89 Real Estate	(178.60)	(6,093.38)	(1,090.87)	(6,093.38)	5,002.51
90 TOTAL PROVISION	$ (1,103.60)	$ 30,623.88	$ 257,336.37	$ (521,418.66)	$ 778,755.03
91 NET PROFIT ON INV. TRANS.	$ (50,669.00)	$ 9,614.93	$ (675,665.59)	$ 956.64	$ (676,622.23
92 INCOME BEFORE PROV. FOR INCOME TAXES AND SHARE OF UNDIST. EARNINGS OF SUBS.	$ (222,178.49)	$ (177,231.26)	$ 726,606.89	$ (384,596.77)	$1,111,203.66
93 Provision for Income Taxes	$ (97,000.00)	$ -0-	$ 476,000.00	$ -0-	$ 476,000.00
94 Less Portion Applicable to Deferred Mortgage Construction Fees	(113,000.00)	-0-	152,000.00	-0-	152,000.00
95 Net Prov. for Income Taxes	$ 16,000.00	$ -0-	$ 324,000.00	$ -0-	$ 324,000.00
96 NET INCOME	$ (238,178.49)	$ (177,231.26)	$ 402,606.89	$ (384,596.77)	$ 787,203.66
Share of Earnings of Subs.	$ 158,380.67	$ 104,338.64	$1,127,878.40	$ 758,951.87	$ 368,926.53
Less Dividends Received	105,000.00	-0-	165,000.00	-0-	165,000.00
Share of Undist. Earnings of Subsidiaries	$ 53,380.67	$ 104,338.64	$ 962,878.40	$ 758,951.87	$ 203,926.53
TOTAL	$ (184,797.82)	$ (72,892.62)	$1,365,485.29	$ 374,355.10	$ 991,130.19
Earned Surplus-Beg.of Period	Nil	1,650,391.33	Nil	1,203,143.61	(1,203,143.61
Gross Surplus	$ (184,797.82)	$1,577,498.71	$1,365,485.29	$1,577,498.71	$ (212,013.42
Less Appropriations for:					
Add'l. Cert. Reserves	1,125,644.90	374,355.10	1,125,644.90	374,355.10	751,289.80
Res. for Contingencies	$1,310,442.72	$1,203,143.61	$ 239,840.39	$1,203,143.61	$ (963,303.22
Earned Surplus - End of Period	$ Nil	$ Nil	$ Nil	$ Nil	$ -0-

2503

[fol. 2503]

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INVESTORS DIVERSIFIED SERVICES, INC.
STATEMENT OF NET INCOME AND EARNED SURPLUS

GENERAL AND ADMINISTRATIVE EXPENSES

	Month of December		Twelve Months Ending December 31,		Increase or (Decrease)
	1949	1948	1949	1948	
Salaries	$230,542.94	$213,459.74	$2,212,188.17	$1,963,174.61	$249,013.56
Rent	10,735.05	9,832.19	124,839.34	91,905.38	32,903.96
Depr. on Furniture & Fixtures	(6,002.10)	(3,111.04)	54,802.95	51,185.86	3,617.09
Miscellaneous Insurance	2,073.83	12,273.39	26,648.35	23,065.07	3,583.28
Federal Taxes Other than Income	3,859.20	4,927.81	26,374.64	20,311.94	5,062.70
Taxes & Fees Other than Income	60,418.29	6,014.72	120,953.23	93,633.51	27,319.72
Payroll Taxes	1,834.92	2,261.07	23,989.87	27,741.15	(3,751.28
Accounting Fees	2,604.75	4,806.57	39,630.78	42,794.36	(3,163.58
Advisory Service	3,797.60	7,626.21	39,932.30	42,675.60	(2,743.30
Attorneys Fees	70,763.65	12,151.75	144,809.09	105,079.20	39,729.89
Directors Fees	624.99	416.66	6,749.87	4,999.92	1,749.95
Membership Dues, Subs., & Dons.	235.00	562.00	12,640.25	11,415.28	1,224.97
Examination Fees	73.03	441.33	21,243.46	20,316.63	926.83
Printing and Stationery	17,353.07	10,599.74	85,908.37	80,892.05	5,016.32
Office Expense	15,955.08	11,023.45	131,874.51	95,394.35	36,480.16
Traveling Expense	18,522.01	21,517.80	143,935.24	137,995.34	5,939.90
Communication	12,149.34	11,864.79	118,997.52	89,118.24	29,879.28
Tabulating Expense	6,091.20	7,158.19	33,826.89	31,190.86	2,635.63
Vouchers Pay. Estimate	(40,000.00)	(40,000.00)	-0-	-0-	-0-
Miscellaneous	1,127.67	6,990.13	14,636.77	12,908.10	1,728.67
TOTAL GENERAL & ADMINISTRATIVE EXPENSE	$414,781.12	$300,866.50	$3,384,031.60	$2,945,996.83	$438,034.77
Less Expenses Allocated to					
I.S. of America, Inc.	$ 46,368.64	$ 46,738.34	$ 487,198.26	$ 432,941.00	$ 54,257.26
I.S. of Canada, Ltd.	57.86	406.51	1,666.24	23,713.55	(22,047.31)
Investors Funding, Ltd.	-0-	-0-	37.83	-0-	37.83
Investors Syndicate, Ltd.	50.00	50.00	600.00	600.00	-0-
Total Deductions	$ 46,476.50	$ 47,194.85	$ 489,502.33	$ 457,254.55	$ 32,247.78
Remainder	$368,304.62	$253,671.65	$2,894,529.27	$2,488,742.30	$405,786.97
Distribution					
To Investment, Servicing & Management	$274,255.35	$188,291.44	$2,262,225.47	$1,930,239.76	$331,985.71
To Underwriting Fees	94,049.27	65,380.21	632,303.80	558,502.54	73,801.26
TOTAL	$368,304.62	$253,671.65	$2,894,529.27	$2,488,742.30	$405,786.97

ANALYSIS OF REGIONAL MANAGERS EXPENSE (67)

Office Expense	$ 807.17	$ 476.53	$ 4,361.77	$ 3,243.87	$ 1,117.90
Communications	1,509.93	1,473.31	10,868.04	8,735.91	2,132.13
Rent	310.00	332.50	2,737.50	2,767.25	(29.75
Travel and Personal	1,142.18	2,319.57	17,567.27	18,703.56	(1,136.29
Entertainment	292.92	698.82	3,558.90	3,562.16	(3.26
Salaries	9,187.19	8,554.86	106,740.28	97,195.97	9,544.31
Sales Contest Expense	649.24	1,584.31	8,916.83	8,676.15	240.68
Sales Meeting Expense	392.65	3,977.89	17,739.26	16,879.03	860.23
Payroll Taxes	25.85	218.38	675.83	903.36	(227.53
TOTAL	$ 14,317.13	$ 19,636.17	$ 173,165.68	$ 160,667.26	$ 12,498.42

[fol. 2504]

1839

2504

INVESTORS DIVERSIFIED SERVICES, INC.

STATEMENT OF NET INCOME AND EARNED SURPLUS

	Month of December		Twelve Months Ending December 31,		Increase or (Decrease)
	1949	1948	1949	1948	
ANALYSIS OF OTHER MORTAGE INCOME (13)					
Construction Loan Fees	$547,839.58	$ 31,971.67	$2,749,812.88	$ 369,587.11	$2,380,225.77
Write Down on Construction Loans	(325,000.00)	-0-	(325,000.00)	-0-	(325,000.00)
Commissions - Insurance	13,406.88	(4,540.80)	236,236.95	203,583.57	32,653.38
Misc. Mortgage Income	2,137.61	1,911.48	18,269.63	7,199.87	11,069.76
First Mtge. Payoff Penalties	6,796.10	16,199.03	58,208.96	63,809.97	(5,601.01)
Management Fees - Shaker Square	1,117.06	1,138.00	12,228.61	12,230.59	(1.98)
Misc. Income - Loan Agencies	(35,429.00)	13,989.29	12,593.16	71,033.59	(58,440.43)
Late Charges Received	3,906.49	-0-	26,371.73	-0-	26,371.73
TOTAL (Item 13)	$214,854.72	$ 60,659.67	$2,788,701.92	$ 727,444.70	$2,061,257.22
ANALYSIS OF CERTIFICATE SERVICING INCOME (15)					
First Year Loading Credits	$ 177.55	$ 606.28	$ 3,224.75	$ 5,605.23	$ (2,380.48)
Subsequent Yrs. Loading Credits	1,004.61	1,128.11	13,575.47	16,385.32	(2,809.85)
Service Fees - Annual Payments	20,308.68	22,833.13	226,497.27	247,642.63	(21,145.36)
Service Fees Other than Ann. Pmts.	27,610.96	34,032.87	330,967.24	395,371.88	(64,404.64)
TOTAL (Item 15)	$ 49,101.80	$ 58,600.39	$ 574,264.73	$ 665,005.08	$ (90,740.35)
NET RECOVERIES ON LAPSES AND SURRENDERS (31)					
Net Lapse Income					
Reserve Recoveries	$ 251.00	$ 175.50	$ 1,661.65	$ 989.94	$ 671.71
Interim Pmt. Recoveries	581.77	339.77	5,884.08	3,975.81	1,908.27
TOTAL	$ 832.77	$ 515.27	$ 7,545.73	$ 4,965.75	$ 2,579.98
Less Cost of Reinst.	1,082.99	5,855.39	10,779.08	13,491.14	(2,712.06)
NET LAPSE INCOME	$ (250.22)	$ (5,340.12)	$ (3,233.35)	$ (8,525.39)	$ 5,292.04
Surrender Income					
Reserve Recoveries	$ 18,025.64	$ 10,570.37	$ 192,175.28	$ 122,431.62	$ 69,743.66
Interim Pmt. Recoveries	256.55	(77.22)	(522.76)	30,376.15	(30,898.91)
SURRENDER INCOME	$ 18,282.19	$ 10,493.15	$ 191,152.52	$ 152,807.77	$ 38,844.75
TOTAL (Item 31)	$ 18,031.97	$ 5,153.03	$ 188,419.17	$ 144,282.38	$ 44,136.79
ANALYSIS OF MORTGAGE AGENCY EXPENSE (47)					
Salaries	$ 80,312.31	$ 58,563.70	$ 642,880.40	$ 541,649.37	$ 101,231.03
Rent	4,261.07	4,286.68	59,124.53	54,702.13	4,422.40
Taxes	1,042.16	869.27	12,584.83	11,357.92	1,226.91
Attorneys' Fees	7,847.00	3,037.50	30,438.80	9,973.30	20,465.30
Office Expense	13,359.18	4,043.55	57,518.03	27,121.11	30,396.92
Traveling Expense	10,244.42	8,983.66	60,522.90	42,414.79	18,108.11
Communications	9,507.59	7,019.85	70,244.07	56,274.66	13,969.41
Commissions and Premiums	2,622.36	69,869.54	64,894.52	474,673.35	(408,835.83)
Premiums Paid Subs.	13,087.25	(5,434.00)	136,639.09	115,298.38	20,393.71
Servicing Contract Canc. Fees	131,964.42	-0-	142,358.02	-0-	142,358.02
Service Fees	23,955.34	32,815.46	268,029.16	261,770.82	6,258.34
Service Fees Paid Subs.	40,606.41	4,634.50	168,023.69	139,415.32	28,608.37
FHA Commitment Fees	54,138.59	1,489.50	461,937.30	1,489.50	460,447.80
Participation Projects	-0-	8,720.42	(5,785.42)	8,720.42	(14,505.84)
Vouchers Payable - Est.	(10,000.00)	(10,000.00)	-0-	-0-	-0-
Miscellaneous	(12,260.68)	15,629.00	36,587.32	45,141.75	(8,554.23)
TOTAL (Item 47)	$370,687.42	$204,528.63	$2,205,997.24	$1,790,004.82	$ 415,992.42

2505

[fol. 2505]

1840

INVESTORS DIVERSIFIED SERVICES, INC.
STATEMENT OF NET INCOME AND EARNED SURPLUS
INTERCOMPANY FEES

(Exclusive of Underwriting Fees and Pro Rata Share of Expense)

FEES RECEIVED

	Misc. Interest Income (4)	Mortgage Service Fee (9)	Premiums on Mtges. (11)	Certificate Collection Fee (17)	Management Fee (19)	Total
Month of December 1949						
I.S. of America		$ 37,484.40	$ 34,062.73	$ 11,242.05	$ 12,369.03	$ 95,158.21
I.S. of Canada					5,046.79	5,046.79
I.S.T. & G. Co.	$ 565.70	7,830.52	4,235.39		1,250.00	13,881.61
Inv. Funding	4,125.00					4,125.00
Jeff. Mtge.	82.62					82.62
Southland Mtge. Co.	440.61					440.61
Inv. Mutual					81,666.94	81,666.94
Inv. Stock					6,034.84	6,034.84
TOTAL	$ 5,213.93	$ 45,314.92	$ 38,298.12	$ 11,242.05	$106,367.60	$ 206,436.62
Twelve Months Ending December 31, 1949						
I.S. of America		$394,536.73	$392,572.81	$113,881.05	$141,212.21	$1,042,202.80
I.S. of Canada					52,761.26	52,761.26
I.S.T. & G. Co.	$12,135.87	94,291.97	54,964.80		15,000.00	176,392.64
Inv. Funding	49,500.00					49,500.00
Jeff. Mtge.	1,955.10					1,955.10
Southland Mtge. Co.	2,510.58					2,510.58
Inv. Mutual					650,931.97	650,931.97
Inv. Stock					55,699.51	55,699.51
Inv. Selective					795.10	795.10
TOTAL	$66,101.55	$488,828.70	$447,537.61	$113,881.05	$916,400.05	$2,032,748.96

FEES PAID

	Certificate Collection Fee (43)	Mortgage Service Fee (47)	Mortgage Premium (47)	Sales Agency Expense (66)	Total
Month of December, 1949					
I.S. of Canada	$ 481.80		$ 461.50		$ 943.30
I.S.T. & G. Co.		$ 9,022.88	3,366.25	$ 3,889.77	16,278.90
Investors Funding			9,259.50		9,259.50
Jefferson Mortgage		29,200.00			29,200.00
Northwest Mortgage Co., Ltd.		2,383.53			2,383.53
TOTAL	$ 481.80	$ 40,606.41	$ 13,087.25	$ 3,889.77	$ 58,065.23
Twelve Months Ending December 31, 1949					
I.S. of Canada	$6,586.20		$ 25,516.03		$ 32,102.23
I.S.T. & G. Co.		$105,559.41	66,846.81	$30,104.42	202,510.64
Investors Funding			44,276.25		44,276.25
Jefferson Mortgage Co.		60,000.00			60,000.00
Northwest Mortgage Co., Ltd.		2,464.28			2,464.28
TOTAL	$6,586.20	$168,023.69	$136,639.09	$30,104.42	$341,353.40

[fol. 2506]

INVESTORS DIVERSIFIED SERVICES, INC.
CONSOLIDATED BALANCE SHEET, MARCH 31, 1950
ASSETS

			MARCH 31, 1950	DEC. 31, 1949
CASH AND INVESTMENTS				
Cash on Hand and in Banks		$ 9,940,330.46		
Less: Funds Held in Spec. Account		$ 3,400,530.75		
Cash in Transit		128,324.16		
Drafts Payable		1,144,413.33		
Total Deductions		$ 4,673,268.24	$ 5,267,062.22	$ 3,480,009.78
Cash in Special Depositaries			4,769,433.81	1,381,169.68
Investment in Securities		$ 49,896,677.97		
Less: Reserve for Possible Future Losses		258,469.50	49,638,208.47	53,691,795.87
F.H.A. Insured First Mortgages		$ 74,600,479.97		
Less: Undisbursed Mortgage Funds		7,351,668.67	67,248,811.30	72,799,364.47
G.I. Partially Guaranteed First Mtges.		$ 32,996,974.32		
Less: Undisbursed Mortgage Funds		123,017.17	32,873,957.15	31,277,945.54
G.I. Fully Guaranteed Mortgages		$ 8,687,210.13		
Less: Undisbursed Mortgage Funds		5,072.36	8,682,137.77	7,957,527.28
Other First Mortgages on Real Estate		$143,935,787.67		
Less: Reserve		$ 40,063.66		
Undisbursed Mortgage Funds		50,901,297.48		
Total Deductions		$ 50,941,361.14	97,994,426.53	96,670,073.29
Contracts for Sale of Real Estate		$ 101,984.38		
Less: Reserve		65.11	101,919.27	107,301.76
Certificate Loans			10,960,372.98	10,855,254.11
Collateral Loans			583,602.83	582,393.21
Leasehold Real Estate			26,232.42	28,355.01
Other Real Estate		$ 342,462.95		
Less: Accumulated Depreciation		$ 12,106.57		
Writedown		1,237.01		
Total Deductions		$ 13,345.58	329,117.37	310,970.70
Accrued Interest & Dividends Receivable			1,519,451.32	1,511,378.74
Total Cash and Investments			$279,996,733.44	$280,653,539.44
OTHER ASSETS				
Investment in Capital Stock of Subsidiary Companies			$ 5,285,825.96	$ 5,284,959.39
Accounts Receivable from Subsidiary Companies			577,369.23	725,773.63
Notes Receivable from Subsidiary Companies		$ 1,189,120.00		
Accrued Interest		7,578.98	1,196,698.98	1,099,324.41
Second Mortgages		$ 6,530.55		
Less: Writedown		6,529.55	1.00	1.00
Cash Surrender Value - Life Insurance			51,594.19	51,594.19
Sundry Accounts Receivable			1,246,083.62	934,272.95
Furniture and Fixtures		$ 847,818.76		
Less: Accumulated Depreciation		334,633.18	513,185.58	511,267.60
Leasehold Improvements		$ 44,856.57		
Less: Accumulated Amortization		6,825.05	38,031.52	32,269.92
Prepaid Expenses and Supply Inventories			143,001.31	165,590.15
Total Other Assets			$ 9,051,791.39	$ 8,805,053.24
Total Assets			$289,048,524.83	$289,458,592.68

- vestors Diversified Services, Inc. has a contingent liability to I.S.T. & C. Co. at March 31, 50 for mortgages endorsed or subject to repurchase agreement amounting to $19,814,090.71 (Including accrued interest) of which $12,543,542.18 were FHA insured mortgages.

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General Accounting Department
April 21, 1950

[fol. 2507]

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INVESTORS DIVERSIFIED SERVICES, INC.
CONSOLIDATED BALANCE SHEET, MARCH 31, 1950
LIABILITIES

	March 31, 1950	December 31 1949
CERTIFICATE RESERVES		
Installment Certificates:		
Cash Surrender Values Attained	$233,582,117.23	$234,753,638.13
Interim Payments	16,403,465.91	16,767,621.12
Certificate Reserves	5,306,938.94	5,395,013.57
Certificate Payments Made in Advance	12,835,104.16	13,220,368.38
Additional Credits - Series "C"	276,110.79	278,089.94
Reserve on Suspended Accounts with Attained Cash Surrender Value	318,776.02	281,371.08
Special Certificate Reserve	3,500,000.00	3,500,000.00
Reserve for Adjustment due to Change in Mode of Payment	635,000.00	635,000.00
Reserve for Death & Disability Refunds	174,773.91	175,012.59
Reserve for Reinstatements	10,000.00	10,000.00
Total Installment Certificate Reserves	$273,043,886.96	$275,016,116.81
Fully Paid Certificates:		
Paid Up Certificates	$ 4,809,409.15	$ 4,782,920.60
Optional Settlements	3,656,098.65	3,642,616.84
Coupon Certificates	433,210.10	442,316.59
Unlocated Certificate Holders	66,626.40	75,524.79
Total Fully Paid Certificate Reserves	$ 8,965,344.30	$ 8,943,378.82
Total Certificate Reserves	$282,009,231.26	$283,959,495.63
OTHER LIABILITIES		
Commissions Payable - Representatives	$ 302,666.83	$ 231,634.66
Notes Payable	137,259.95	137,259.95
Vouchers Payable	50,000.00	242,278.56
Accounts Payable to Subsidiary Companies	72,405.15	73,038.85
Sundry Accounts Payable	629,538.99	221,300.87
Accrued Taxes and Fees	877,061.55	591,357.29
Accrued Incentive Pay Bonus	365,551.96	279,047.46
Reserve for Deferred Expense	11,326.95	11,326.95
Suspense	147,438.84	61,205.53
Total Other Liabilities	$ 2,593,230.22	$ 1,848,750.12
DEFERRED INCOME		
Deferred Mortgage Construction Loan Fees	$ 754,706.34	$ 565,358.26
Interest Collected in Advance on Certificate Loans	143,698.36	148,758.03
Rent Collected in Advance on Leasehold	-0-	202.89
Interest Collected in Advance on Mortgages	-0-	28,150.00
Deferred Income - Surety Bond Premiums	11,891.20	11,171.10
Total Deferred Income	$ 910,295.90	$ 753,640.28
Total Liabilities and Reserves	$285,512,777.38	$286,561,886.03
CAPITAL STOCK AND SURPLUS		
Capital Stock, Common $5.00 Par Value	$ 574,540.80	$ 574,540.80
Capital Stock, Common, Class "A" $5.00 Par Value	879,181.85	879,181.85
Reserve for Contingencies	2,082,024.80	1,442,984.00
Earned Surplus	Nil	Nil
Total Capital Stock and Surplus	$ 3,535,747.45	$ 2,896,706.65
TOTAL	$289,048,524.83	$289,458,592.68

2508

[fol. 2508]

1843

INVESTORS DIVERSIFIED SERVICES, INC.
STATEMENT OF NET INCOME AND EARNED SURPLUS

GROSS INCOME

	Month of March		Three Months Ending March 31,		Increase or (Decrease)
	1950	1949	1950	1949	
INVESTMENT, SERVICING & MANAGEMENT					
1. Int. on Mtge. Loans	$ 820,110.93	$ 715,800.04	$2,492,548.06	$2,154,866.59	$ 337,681.47
2. Interest on Bonds	69,180.34	87,823.59	272,312.81	256,041.82	16,270.99
3. Int. on Cert. Loans	48,601.58	44,343.93	145,140.97	131,664.65	13,476.32
4. Miscellaneous Int.	5,523.77	6,133.31	14,902.06	18,558.17	(3,656.11)
5. Dividends on Stock	110,570.43	127,718.04	215,637.60	249,509.34	(33,871.74)
6. Dividends on Stock of Sub. Cos.	-0-	-0-	-0-	-0-	-0-
7. Corp. Financing Fees	20,000.00	-0-	20,000.00	45,000.00	(25,000.00)
Mortgage Service Fees:					
8. F.H.A. Mtges. Owned	364.66	3,057.46	944.64	9,231.19	(8,286.55)
9. Subsidiary Cos.	51,239.57	37,780.17	147,555.80	116,924.62	30,631.18
10. Non-affiliated Cos.	32,457.79	26,654.57	86,131.62	48,236.28	37,895.34
Premiums on Mtges. Sold:					
11. Subsidiary Cos.	69,637.41	14,025.84	183,401.17	(25,938.91)	209,340.08
12. Non-affiliated Cos.	29,700.00	8,615.51	61,853.70	34,283.56	27,570.14
13. Other Mtge. Income	442,723.97	183,296.64	1,416,467.80	351,662.27	1,064,805.53
14. Gross Income from R.E.	135.00	167.50	203.64	367.82	(164.18)
15. Cert. Servicing Income	48,208.02	54,660.13	138,394.42	157,656.82	(19,262.40)
16. Trans. & Duplicate Fees	193.10	372.00	421.10	923.10	(502.00)
17. Cert. Collection Fees From I.S.A.	11,387.10	10,147.65	30,450.15	26,326.80	4,123.35
18. Coll. Fees-Ins. Prems.	2,924.25	694.95	6,751.68	1,676.79	5,074.89
19. Management Fees from Subs. & Managed Cos.	105,380.61	83,264.82	303,533.93	228,603.71	74,930.22
20. Miscellaneous Income	1,270.32	1,034.22	3,611.84	3,147.92	463.92
21. TOTAL	$1,889,628.83	$1,410,630.37	$5,540,262.99	$3,808,742.54	$1,731,520.45
UNDERWRITING FEES FROM:					
22. I.S. of America	$ 423,255.74	$ 416,007.27	$1,123,166.71	$1,102,921.75	$ 20,244.96
23. Investors Mutual	403,283.47	252,474.61	972,314.24	640,562.36	331,751.88
24. Investors Stock Fund	24,532.63	13,893.56	72,026.89	43,775.81	28,251.08
25. Investors Sel. Fund	21,706.15	-0-	45,952.93	-0-	45,952.93
26. TOTAL	$ 872,779.99	$ 682,375.44	$2,213,460.77	$1,787,259.92	$ 426,200.85
27. TOTAL-GROSS INCOME	$2,762,408.84	$2,093,005.81	$7,753,723.76	$5,596,002.46	$2,157,721.30

General Accounting Department
April 21, 1950

[fol. 2509]

INVESTORS DIVERSIFIED SERVICES, INC.
STATEMENT OF NET INCOME AND EARNED SURPLUS

	Month of March		Three Months Ending March 31,		Increase or (Decrease)
	1950	1949	1950	1949	
INVESTMENT, SERVICING AND MANAGEMENT					
30 Apro. to Reserve	$1,057,193.06	$1,031,593.02	$3,299,041.47	$3,189,392.72	$109,648.75
31 Less Net Recoveries on Lapses & Surrenders	15,499.68	16,806.91	48,117.76	43,361.38	4,756.39
32 Remainder Net Cost	$1,041,693.38	$1,014,786.11	$3,250,923.71	$3,146,031.34	$104,892.37
33 Prov. for Change in Payment Method	-0-	5,000.00	-0-	15,000.00	(15,000.00)
34 Int. On Advance Pmts.	27,856.55	32,707.70	84,031.57	99,123.39	(15,093.82)
35 Int. on Pd. Up Cert.	16,870.27	17,644.44	51,050.08	52,685.26	(1,635.18)
36 Int. on Opt. Settlement	11,585.87	12,927.86	34,904.10	38,489.54	(3,585.44)
37 Int. on Coupon Cert.	1,044.50	1,117.63	3,158.38	3,361.13	(202.75)
38 Int. on Add'l. Cr. - "G"	527.93	525.94	1,664.53	1,689.39	(24.86)
39 Int. on Misc. Cert.	(7.92)	233.99	(16.42)	226.68	(243.10)
40 Comm.Paid I.D.S. Cert.	439.25	603.74	105.82	1,504.31	(1,398.49)
41 Coll. Agency Exp. Prop.	22,163.01	25,813.92	65,673.57	74,947.06	(9,273.49)
42 Coll. Fees Paid ISC, Ltd.	527.85	616.20	1,579.50	1,834.05	(254.55)
43 Depr. on Real Estate	870.84	771.71	2,304.24	3,087.13	(782.89)
44 Other Real Estate Exp.	1,534.85	4,911.94	3,517.35	4,981.37	(1,464.01)
45 Int. Chgd. Off Fclsd.Mtge.	82.64	-0-	468.40	-0-	468.40
46 Mtge. Agency Expenses	231,883.32	135,472.55	722,349.07	376,431.36	345,917.71
47 Mortgage Advertising	468.00	182.59	542.50	506.34	36.16
48 Prov. for Mtge. Reserves	5,993.09	(9.44)	4,535.52	(66.63)	4,603.15
49 Collection & Exchange Depositary Fees	1,491.48	1,515.88	4,023.66	3,290.71	732.95
	5,000.00	5,000.00	15,000.00	15,000.00	-0-
51 Misc. Interest Expense	-0-	-0-	-0-	.25	(.25)
52 Death & Disab. Refund Prov.	1,407.54	1,544.69	4,105.71	4,527.93	(422.22)
53 Refunds on Canc. Cert.	(48.35)	-0-	204.30	36.60	167.70
54 Gen'l. & Adm. Exp. Prop.	188,962.91	170,988.98	571,830.52	520,036.64	51,793.88
55 TOTAL	$1,580,347.51	$1,432,296.44	$4,821,957.12	$4,362,725.85	$459,231.27
UNDERWRITING FEES					
56 Comm. Pd. ISA Cert.	$ 267,356.68	$ 260,238.19	$ 703,104.68	$ 687,879.08	$ 15,225.60
57 Comm. Pd. IM Stock	251,171.99	158,137.80	603,674.69	399,981.20	203,693.49
58 Comm. Pd. Stk. Fund Stk.	15,262.67	8,353.96	44,561.03	27,256.28	17,304.75
59 Comm. Pd. Sel. Fund Stk.	15,946.15	-0-	33,243.26	-0-	33,243.26
60 Prov. for Incentive Pay	37,106.36	22,527.00	87,106.36	67,581.00	19,525.36
61 Registration Fees	10,260.53	13,480.16	13,469.03	15,426.16	(1,957.13)
62 Advertising	2,985.25	3,782.07	6,585.11	6,870.15	(285.04)
63 Sales Prom. & Convention	23,221.51	11,348.01	46,967.96	22,211.61	24,756.35
64 Prospectuses	3,767.59	-0-	3,767.59	-0-	3,767.59
65 Prov. for Res. for Bad Debts - Repr.	16,292.49	6,843.99	28,674.47	19,868.63	8,805.84
66 Sales Agency Coll. Fees & Expense - Prop.	28,128.04	14,257.27	73,789.32	41,587.97	32,201.35
67 Regional Managers Exp.	16,077.09	13,473.87	40,671.63	35,905.65	4,765.98
68 Gen'l. & Adm. Exp. - Prop.	31,703.79	41,378.60	145,682.68	132,630.94	13,051.74
69 TOTAL	$ 729,280.14	$ 553,800.92	$1,831,298.01	$1,457,198.67	$374,099.34
70 TOTAL COSTS & EXPENSES	$2,309,627.65	$1,986,097.36	$6,653,255.13	$5,819,924.52	$833,330.61

[fol. 2510]

INVESTORS DIVERSIFIED SERVICES, INC.
STATEMENT OF NET INCOME AND EARNED SURPLUS

	Month of March 1950	Month of March 1949	Three Months Ending March 31, 1950	Three Months Ending March 31, 1949	Increase or (Decrease)
NET OPERATING INCOME					
75 Investment, Servicing & Management	$309,231.34	$(21,111.07)	$ 718,303.87	$(53,901.31)	$1,272,289.14
76 Underwriting Fees	133,199.85	123,574.52	382,162.75	339,061.23	52,101.52
77 NET INCOME FROM OPERATIONS	$442,781.19	$106,908.45	$1,100,466.63	$223,922.06	$1,324,390.66
INCOME CHARGES - NET					
78 Provision for Canadian Exchange	$ 4,914.97	$ -0-	$ 4,007.58	$ -0-	$ 4,007.58
79 Profit on Foreign Exchange	(12.00)	.28	(36.00)	18.77	(54.77)
80 Sundry Income Credit - Net	(159.39)	(43.21)	(159.39)	8.87	(168.26)
81 TOTAL	$ 4,743.58	$ (42.93)	$ 3,812.19	$ 27.64	$ 3,784.55
82 NET INCOME BEFORE PROFIT ON INVESTMENT TRANSACTIONS AND PROV. FOR INCOME TAXES	$438,037.61	$106,951.38	$1,096,656.44	$223,949.70	$1,320,606.14
REALIZED PROFIT ON INVESTMENT TRANSACTIONS					
83 Bonds and Securities	$ (154.35)	$ 15,548.28	$ (207,879.25)	$ 51,367.48	$ (259,246.73)
84 Real Estate	-0-	909.46	41.31	965.61	(924.30)
85 TOTAL	$ (154.35)	$ 16,457.74	$ (207,837.94)	$ 52,333.09	$ (260,171.03)
Less Prov. for Inv. Reserves					
86 Bonds and Securities	$ (23,781.77)	$ 15,548.28	$ (36,675.00)	$ 51,367.48	$ (88,042.48)
87 Real Estate	-0-	(310.83)	-0-	(310.83)	310.83
88 TOTAL Provision	$ (23,781.23)	$ 15,237.45	$ (36,675.00)	$ 51,056.65	$ (87,731.65)
89 NET PROFIT OR INV. TRANS.	$ 8,366.90	$ 1,220.29	$ (171,162.94)	$ 1,276.44	$ (172,439.38)
90 NET PROFIT BEFORE PROV. FOR INCOME TAXES AND SHARE OF UNDIST. EARNINGS OF SUBS.	$446,404.51	$108,171.67	$ 925,493.50	$225,225.26	$1,148,186.76
91 Provision for Income Taxes	$ 70,000.00	$ -0-	$ 430,000.00	$ -0-	$ 430,000.00
92 Less Portion Applicable to Deferred Mortgage Construction Fees	(24,531.43)	-0-	137,723.88	-0-	137,723.88
93 Net Prov. for Income Tax	$ 96,531.23	$ -0-	$ 294,276.12	$ -0-	$ 292,276.12
94 NET INCOME	$349,873.28	$108,171.67	$ 631,217.38	$225,225.26	$ 855,910.64
Share of Earnings of Subs.	$ 80,686.87	$127,812.09	$ 7,823.42	$221,396.05	$ (213,572.63)
Less Dividends Received	-0-	-0-	-0-	-0-	-0-
Share of Undist. Earnings of Subsidiaries	$ 80,686.87	$127,812.09	$ 7,823.42	$221,396.05	$ (213,572.63)
TOTAL	$430,560.15	$235,983.76	$ 639,040.80	$ (1,297.21)	$ 640,338.01
Earned Surplus-beg. of Period	Nil	Nil	Nil	Nil	Nil
Gross Surplus	$430,560.15	$235,983.76	$ 639,040.80	$ (1,297.21)	$ 640,338.01
Less Appropriations for: Res. for Contingencies	430,560.15	235,983.76	639,040.80	(1,297.21)	640,338.01
Earned Surplus - end of Period	$ Nil	$ Nil	$ Nil	$ Nil	$ Nil

[fol. 2511]

INVESTORS DIVERSIFIED SERVICES, INC.
STATEMENT OF NET INCOME AND EARNED SURPLUS

GENERAL AND ADMINISTRATIVE EXPENSES

	Month of March		Three Months Ending March 31,		Increase or (Decrease)
	1950	1949	1950	1949	
Salaries	$191,733.19	$173,993.67	$602,987.65	$522,426.40	$80,561.25
Rent	11,981.28	10,215.08	34,459.86	29,984.81	4,475.05
Depr. on Furniture & Fixtures	4,726.57	5,291.92	14,016.21	15,599.01	(1,582.80)
Miscellaneous Insurance	1,340.75	1,856.31	5,231.62	5,255.41	(23.79)
Federal Taxes Other than Income	936.62	643.63	2,293.80	1,391.93	901.87
Taxes & Fees Other than Income	2,270.05	2,210.38	4,459.42	3,544.37	915.05
Payroll Taxes	3,051.80	2,827.87	11,006.93	9,087.98	1,918.95
Accounting Fees	6,710.33	3,901.71	21,700.32	19,386.50	2,313.82
Advisory Fees & Expenses	10,025.00	5,131.49	14,932.70	8,888.62	6,044.08
Legal Expenses	7,150.69	9,939.01	10,457.57	24,454.24	(13,996.67)
Directors Fees	624.99	416.66	1,874.97	1,249.98	624.99
Membership Dues and Donations	1,113.49	322.50	3,477.09	2,085.50	1,391.59
Examination Fees	337.76	202.25	1,093.79	692.59	401.20
Printing and Stationery	10,485.79	1,410.72	9,497.36	7,813.13	1,684.23
Office Expense	16,495.28	13,564.51	35,810.50	32,650.17	3,160.33
Traveling Expense	11,200.89	11,053.62	26,129.95	31,607.88	(5,477.93)
Communication	8,243.82	8,187.73	22,389.82	19,722.93	2,666.89
Vouchers Pay. Estimate	-0-	-0-	40,000.00	40,000.00	-0-
Miscellaneous	50.52	3,642.03	(3,853.45)	2,828.71	(6,682.16)
TOTAL GENERAL & ADMINISTRATIVE EXPENSE	$268,478.82	$254,811.12	$858,566.11	$778,670.16	$79,895.95
Less Expenses Allocated to					
I.S. of America, Inc.	$ 47,649.38	$ 42,392.49	$140,624.65	$125,387.49	$15,237.16
I.S. of Canada, Ltd.	112.74	81.54	278.26	427.26	(149.00)
Investors Funding, Ltd.	-0-	(49)	-0-	37.83	(37.83)
Investors Syndicate, Ltd.	50.00	50.00	150.00	150.00	-0-
Total Deductions	$ 47,812.12	$ 42,523.54	$141,052.91	$126,002.58	$15,050.33
Remainder	$240,666.70	$212,287.58	$717,513.20	$652,667.58	$64,845.62
Distribution					
To Investment, Servicing & Management	$188,962.91	$170,928.98	$571,830.52	$520,036.64	$51,793.88
To Underwriting Fees	51,703.79	41,358.60	145,682.68	132,630.94	13,051.74
TOTAL	$240,660.70	$212,287.58	$717,513.20	$652,667.58	$64,845.62

ANALYSIS OF REGIONAL MANAGERS EXPENSES (66)

Office Expense	$ 489.43	$ 474.18	$ 836.02	$ 1,001.63	$ (165.61)
Communications	709.03	847.49	1,457.10	1,777.50	(320.40)
Rent	260.00	230.00	617.50	587.50	30.00
Travel and Personal	1,816.93	1,581.48	4,771.90	3,518.74	1,253.16
Entertainment	369.72	304.26	846.80	814.90	31.90
Salaries	9,073.04	8,618.07	27,211.17	25,546.14	1,665.03
Sales Contest Expense	43.77	438.03	454.21	865.74	(411.53)
Sales Meeting Expense	3,237.69	867.12	3,859.21	1,318.57	2,540.64
Payroll Taxes	75.48	93.24	617.72	474.93	142.79
TOTAL	$ 16,077.09	$ 13,473.87	$ 40,671.63	$ 35,905.65	$ 4,765.98

2512

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fol. 25121

1847

[illegible] DIVERSIFIED SERVICES, INC.
[illegible] OF NET INCOME AND EARNED SURPLUS

	Month of March		Three Months Ending March 31,		Increase or (Decrease)
	1950	1949	1950	1949	
ANALYSIS OF OTHER MORTGAGE INCOME (13)					
Construction Loan Fees	$403,088.84	$165,280.39	$1,275,591.19	$292,942.75	$ 982,648.44
Commissions - Insurance	15,606.12	8,267.63	63,755.10	27,309.11	36,445.99
Misc. Mortgage Income	731.42	1,586.09	3,288.11	3,585.46	(297.35)
First Mtge. Payoff Penalties	3,499.98	8,895.03	21,916.17	13,371.62	8,544.55
Management Fees - Shaker Square	1,051.35	994.44	3,007.58	2,934.62	72.96
Misc. Income - [illegible]	13,310.12	3,272.79	36,165.87	11,518.71	24,647.16
Late Charges Received	5,494.14	-0-	12,743.78	-0-	12,743.78
TOTAL (Item 13)	$442,725.97	$188,296.64	$1,416,467.80	$351,662.27	$1,064,805.53
ANALYSIS OF CERTIFICATE SERVICING INCOME (15)					
First Year Investment Credits	$ 574.44	$ 434.08	$ 1,044.68	$ 1,191.11	$ (146.43)
Subsequent Inv. Trading Credits	909.65	1,769.81	2,490.37	4,020.42	(1,530.05)
Service Fees - Annual Payment	17,853.61	21,011.01	54,450.66	61,962.53	(7,511.87)
Service Fees Other than Ann. Pmts.	28,870.32	31,445.23	80,408.71	90,482.76	(10,074.05)
TOTAL (Item 15)	$ 48,208.02	$ 54,660.13	$ 138,394.42	$157,656.82	$ (19,262.40)
NET RECOVERIES ON LAPSES AND SURRENDERS (31)					
Net Lapse Income					
Reserve Recoveries	$ 3.30	$ 75.00	$ 132.10	$ 230.30	$ (98.20)
Interim Pmt. Recoveries	118.22	388.39	833.76	1,204.35	(370.59)
TOTAL	$ 121.52	$ 463.39	$ 965.86	$ 1,434.65	$ (468.79)
Less Cost of Reinst.	1,678.34	1,153.33	3,300.32	3,354.46	(54.14)
NET LAPSE INCOME	$ (1,556.82)	(689.94)	$ (2,334.46)	$ (1,919.81)	$ (414.65)
Surrender Income					
Reserve Recoveries	$ 17,231.80	$ 17,618.71	$ 50,645.40	$ 45,597.65	$ 5,047.75
Interim Pmt. Recoveries	(175.30)	(121.86)	(193.18)	(316.46)	123.28
SURRENDER INCOME	$ 17,056.50	$ 17,496.85	$ 50,452.22	$ 45,281.19	$ 5,171.03
TOTAL (Item 31)	$ 15,499.68	$ 16,806.91	$ 48,117.76	$ 43,361.38	$ 4,756.38
ANALYSIS OF MORTGAGE AGENCY EXPENSES (46)					
Salaries	$ 74,139.16	$ 46,991.14	$ 203,947.87	$136,835.05	$ 67,092.82
Rent	6,728.72	4,962.26	17,606.42	14,029.22	3,577.20
Taxes	4,192.30	1,113.92	9,781.41	3,017.23	6,764.18
Legal Expense	1,029.30	325.00	2,151.29	381.11	1,770.18
Office Expense	2,074.67	3,830.64	17,597.68	7,264.70	10,332.98
Traveling Expense	4,228.04	4,912.46	8,751.11	10,056.81	(1,305.70)
Communications	9,158.31	6,343.03	19,978.34	14,464.03	5,514.31
Commissions and Premiums	6,570.19	1,956.75	16,870.08	4,561.81	12,308.27
Premiums Paid Subs.	4,715.75	13,895.86	32,548.68	31,769.87	778.81
Servicing Contract Canc. Fees.	4,279.90	4,787.74	24,715.24	4,787.74	19,927.50
Service Fees	16,353.69	18,499.90	43,344.66	55,811.66	(12,467.00)
Service Fees Paid Subs.	15,022.27	11,330.75	44,217.72	33,605.87	10,611.85
FHMA Commitment Fees	91,071.08	18,677.50	258,926.98	44,413.00	214,511.98
Participation Projects	-0-	(10,376.94)	-0-	(5,645.50)	5,645.50
Vouchers Payable - Est.	-0-	-0-	10,000.00	10,000.00	-0-
Miscellaneous	6,320.44	6,242.55	11,911.59	11,056.76	854.83
TOTAL (Item 46)	$251,883.82	$135,472.55	$ 722,349.07	$376,431.36	$ 345,917.71

[fol. 2513]

INVESTORS DIVERSIFIED SERVICES, INC.
STATEMENT OF NET INCOME AND EARNED SURPLUS
LIFE COMPANY FUNDS

(Exclusive of Underwriting Fees and Pro Rata Share of Expense)

FEES RECEIVED

	Misc. Interest Income (4)	Mortgage Service Fee (9)	Premiums on Mtges. (11)	Certificate Collection Fee (17)	Management Fee (19)	Total
Month of March 1950						
I.S. of America		$ 43,242.07	$ 64,700.94	$11,387.10	$ 7,893.50	$127,223.61
I.S. of Canada					5,300.00	5,300.00
I.S.T. & G. Co.	$ 677.86	7,997.50	4,936.47		1,250.00	14,861.83
Inv. Funding	4,125.00					4,125.00
Jeff. Mtge.	20.84					20.84
Southland Mtge. Co.	482.82					482.82
Inv. Mutual					84,727.03	84,727.03
Inv. Stock					6,160.08	6,160.08
TOTAL	$ 5,306.52	$ 51,239.57	$ 69,637.41	$11,387.10	$105,330.61	$242,901.21
Three Months Ending March 28, 1950						
I.S. of America		$123,667.51	$169,172.59	$30,450.15	$ 25,872.46	$349,162.71
I.S. of Canada					16,039.85	16,039.85
I.S.T. & G. Co.	308.01	23,888.29	14,228.58		3,750.00	42,174.88
Inv. Funding	12,375.00					12,375.00
Jeff. Mtge.	62.50					62.50
Southland Mtge. Co.	1,364.05					1,364.05
Inv. Mutual					240,483.01	240,483.01
Inv. Stock					17,386.61	17,386.61
Inv. Selective					-0-	-0-
TOTAL	$14,109.56	$147,555.80	$183,401.17	$30,450.15	$303,533.93	$679,050.61

FEES PAID

	Certificate Collection Fee (42)	Mortgage Service Fee (46)	Mortgage Premium (46)	Sales Agency Expense (65)	Total
Month of March 1950					
I.S. of Canada	$ 527.85		$ 1,554.79		$ 2,082.64
I.S.T. & G. Co.		$ 9,341.30	2,000.00	$ 3,110.86	14,452.16
Investors Funding			1,161.00		1,161.00
Jefferson Mortgage		5,000.00			5,000.00
Northwest Mortgage Co., Ltd.		680.97			680.97
TOTAL	$ 527.85	$ 15,022.27	$ 4,715.79	$ 3,110.86	$ 23,376.77
Three Months Ending March 31, 1950					
I.S. of Canada	$1,579.50		$ 4,633.68		$ 6,213.18
I.S.T. & G. Co.		$ 27,520.06	15,362.50	$ 9,131.68	52,014.24
Investors Funding			12,550.50		12,550.50
Jefferson Mortgage Co.		15,000.00			15,000.00
Northwest Mortgage Co., Ltd.		1,697.66			1,697.66
TOTAL	$1,579.50	$ 44,217.72	$32,548.68	$ 9,131.68	$ 87,477.58

[fol. 2514]

[fol. 2515]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-187

CERTIFICATE

I, the undersigned, David W. Wallace, Secretary of Alleghany Corporation, a Maryland corporation, do hereby certify as follows:

1. A meeting of the Board of Directors of Alleghany Corporation was held on March 24, 1949, (hereinafter called "the meeting").

2. Messrs. J. J. Anzalone, O. Henry Briggs, Herman R. Neff, Brooks Potter, R. W. Purcell, Andrew Van Pelt and Robert R. Young constituting a quorum of the Board of Directors were present at the meeting.

3. The following is a true excerpt from the minutes of the meeting:

The Chairman advised the Board that, pursuant to understanding at the previous Board meeting, the members of the Board had been furnished with a report on the Investors Syndicate, Inc., and pursuant to the understanding at the previous Board meeting, the officers had continued negotiation for the purchase of the 85,660 shares of such Common stock. At the request of the Chairman Mr. Purcell reported that he had been continuing negotiations and that Mr. Gamble, owner and representative of the stock in question, was in New York today; that negotiations up to the present time had resulted in a proposal by Mr. Gamble to sell his stock for a cash down-payment of $1,300,000 with the right to an additional amount equal to ½ of the increase in value of the stock over a period of years but, in no event, to be in excess of an additional $1,300,000; or in the alternative $1,750,000 in cash. Mr. Purcell stated that an informal

Committee of this Board, consisting of himself, Mr. Bateman, and Mr. Potter had undertaken to review this matter and that he and Mr. Bateman, after considerable study, had concluded that the purchase was a desirable one, and Mr. Purcell recommended that the Board authorize the acquisition indicating that he felt that some improvement in the price and terms might possibly be secured. Mr. Potter then reported that he was not yet satisfied that the purchase should be made as he needed added information and that on the basis of his present information he would not be in favor of the acquisition. Mr. Neff stated that he had made independent inquiries concerning the company and on the basis of the information which he had received he doubted the desirability, without further information than that contained in the report, of concluding the purchase at this time. A discussion ensued, after which the Board concluded to continue its investigation of the company and authorized the officers to continue negotiations. Further reports of the company are to be furnished to the Directors by Mr. Shipman.

A suggestion was made that, meanwhile, it might be advisable to purchase about 10,000 shares of the Class A stock of Investors Syndicate, Inc. on the market and should such action appear desirable, such purchases could be made by authorization of the Executive Committee.

[fol. 2516] In Witness Whereof, I have executed this certificate and affixed the seal of the Corporation this day of November, 1955.

.....

Secretary

(SEAL)

State of New York)
) ss.:
County of New York)

On this day of November, 1955, in the said County of New York, before me, a Notary Public duly commissioned and qualified, in and for the State and County aforesaid, personally came David W. Wallace, personally known to me, and known to me to be the person described in and who executed the foregoing certificate, and acknowledged to me that he executed the same; and being by me duly sworn, did depose and say that he is the Secretary of the Board of Directors of the Alleghany Corporation; that as such officer he keeps the corporate minute books and seal of the said Corporation; and that the foregoing certificate truly sets forth the matters referred to therein as they appear in the minute books of the Corporation.

Subscribed and sworn to before me this day of November, 1955.

(SEAL) .....

[fol. 2517]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT No. K-208

CERTIFICATE

I, the undersigned, David W. Wallace, Secretary of Alleghany Corporation, a Maryland corporation, do hereby certify as follows:

1. A meeting of the Board if Directors of Alleghany Corporation was held on February 24, 1950, (hereinafter called "the meeting").

2. Messrs. J. J. Anzalone, O. Henry Briggs, Allan P. Kirby, Herman R. Neff, Andrew Van Pelt, and Robert

R. Young constituting a quorum of the Board of Directors were present at the meeting.

3. The following is a true excerpt from the minutes of the meeting:

The Chairman referred to the resolution of the Board adopted at its meeting on December 6, 1949 offering to exchange the Corporation's portfolio holdings of 48,225.61 shares of Investors Diversified Services, Inc. Class A Common stock for Alleghany Prior Preferred and Series A Preferred stocks held by officers of the Corporation, subject to approval or rejection by the stockholders of the Corporation at their annual meeting on May 3, 1950, and reported that pursuant thereto he had tendered on January 20, 1950, 2,420 shares of Alleghany Series A Preferred stock at $81 per share, the closing sale on January 20, 1950, in exchange for 24,063 shares of Investors Diversified Services, Inc. Class A Common stock valued at 8.1453 per share (the average cost to Alleghany of Investors Diversified Services, Inc. Class A stock, the market quotation of said stock on January 20, 1950 being 6 bid, 6½ asked) and cash of $19.65; that Mr. Kirby had likewise tendered 2,420 shares of Alleghany Series A Preferred stock in exchange for 24,062 shares of Investors Diversified Services, Inc. Class A Common stock and cash of $27.79; and that Mr. Anzalone had tendered ten shares of Alleghany Prior Preferred stock at $81.75 per share, (the mean of the closing bid of 80½ and asked price of 83 on January 20, 1950) in exchange for 100 shares of Investors Diversified Services, Inc. Class A Common stock and $2.97 in cash. The Chairman explained that the Investors Diversified Services, Inc. Class A stock was valued for exchange purposes at the average cost to Alleghany of such shares, as the market quotations for Investors Diversified Services, Inc. Class A stock was lower at 6 bid, 6½ asked, sale at 6½, than said average cost. The Chairman stated that these tenders would remain outstanding until they shall have been approved or rejected by the stockholders of the Corporation at their annual meeting on May 3, 1950.

In Witness Whereof, I have executed this certificate and affixed the seal of the Corporation this 15 day of September, 1955.

(SEAL) /s/ DAVID W. WALLACE
Secretary

[fol. 2518]
State of New York)
) ss.:
County of New York)

On this 15 day of September, 1955, in the said County of New York, before me, a Notary Public duly commissioned and qualified, in and for the State and County aforesaid, personally came David W. Wallace, personally known to me, and known to me to be the person described in and who executed the foregoing certificate, and acknowledged to me that he executed the same; and being by me duly sworn, did depose and say that he is the Secretary of the Board of Directors of the Alleghany Corporation; that as such officer he keeps the corporate minute books and seal of the said Corporation; and that the foregoing certificate truly sets forth the matters referred to therein as they appear in the minute books of the Corporation.

Subscribed and sworn to before me this 15 day of September, 1955.

(NOTARIAL SEAL) /s/ FLORENCE V. KENNY

FLORENCE V. KENNY
Notary Public, State of New York
No. 24-7236200

Qualified in Kings County
Cert. filed in New York County
Commission Expires March 30, 1956